Vol. IV

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1941

No. 30

DANIEL D. GLASSER, PETITIONER,

vs.

THE UNITED STATES OF AMERICA

No. 31

NORTON I. KRETSKE, PETITIONER,

vs.

THE UNITED STATES OF AMERICA

No. 32

ALFRED E. ROTH, PETITIONER,

vs.

THE UNITED STATES OF AMERICA

WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITIONS FOR CERTIORARI FILED FEBRUARY 28, 1941.

CERTIORARI GRANTED APRIL 7, 1941.

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1940.

No. .....

DANIEL D. GLASSER,

Petitioner,

vs.

THE UNITED STATES OF AMERICA,

Respondent.

No. .....

NORTON I. KRETSKE,

Petitioner,

vs.

THE UNITED STATES OF AMERICA,

Respondent.

No. .....

ALFRED E. ROTH,

Petitioner,

vs.

THE UNITED STATES OF AMERICA,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

INDEX.

At a regular term of the United States Circuit Court of Appeals for the Seventh Circuit held in the City of Chicago and begun on the third day of October, in the year of our Lord one thousand nine hundred and thirty-nine, and of our Independence the one hundred and sixty-fourth.

United States of America,
Plaintiff-Appellee,
7315 *vs.*
Daniel D. Glasser,
Defendant-Appellant.

United States of America,
Plaintiff-Appellee,
7316 *vs.*
Norton I. Kretske,
Defendant-Appellant.

United States of America,
Plaintiff-Appellee,
7317 *vs.*
Alfred E. Roth,
Defendant-Appellant.

Appeals from the District Court of the United States for the Northern District of Illinois, Eastern Division.

And, to-wit: On the tneth day of July, 1940, in causes Nos. 7315, 7316 and 7317, the following further proceedings were had and entered of record, to-wit:

Wednesday, July 10, 1940.

Court met pursuant to adjournment.

Before:

Hon. Walter E. Treanor, Circuit Judge.

United States of America,
Plaintiff-Appellee,
7315 *vs.*
Daniel D. Glasser,
Defendant-Appellant.

United States of America,
Plaintiff-Appellee,
7316 *vs.*
Norton I. Kretske,
Defendant-Appellant.

United States of America,
Plaintiff-Appellee,
7317 *vs.*
Alfred E. Roth,
Defendant-Appellant.

Appeals from the District Court of the United States for the Northern District of Illinois, Eastern Division.

On motion of defendants-appellants, it is ordered that these appeals be consolidated for the purpose of having one transcript of record for all appeals.

Upon petition of defendants-appellants, it is further ordered that this cause be heard upon the printed record papers filed and proceedings entered in the District Court and the typewritten transcript of evidence.

It is further ordered that the motion to eliminate portions of the District Court Clerk's record be, and the same is hereby, granted.

And afterwards: to-wit: On the second day of August, 1940, in causes Nos. 7315, 7316 and 7317, there was filed in the office of the Clerk of this Court a certificate, to exhibits, which said certificate to exhibits is in the words and figures following, to-wit:

Northern District of Illinois, } ss.
Eastern Division. }

Hoyt King, Clerk of the District Court of the United States for the Northern District of Illinois, do hereby certify that I herewith transmit to the United States Circuit Court of Appeals for the Seventh Circuit certain original Exhibits in the case entitled: United States of Amer. . *vs.* Daniel D. Glasser, *et al.*, D. C. 31825, said Exhibits are marked as follows, to-wit:

Received of William J. Campbell, United States District Attorney, the following exhibits which were introduced in the case of United States *vs.* Daniel D. Glasser, *et al.*, in the District Court of the United States of America in Northern District of Illinois, Eastern Division:

Exhibit No.	Description.
1	June 1935—Grand Jury Minutes.
2	File in case of U. S. *vs.* Workman, D. C. No. 29092, containing correspondence, seizure list, statements of various witnesses pertaining to Continental Warehouse Co., 973 W. Cullerton St., Chicago, Ill.
3A-G incl.	Originals of letters from U. S. Atty.'s office, Chicago to Atty. Gen., Wash., D. C., in regard to discharge of certain defendants in Workman.
4	Closed case docket, U. S. Attorney's Office, D. C. cases No. 28800 to 29299.
5	Indictment returned June, 1935 *vs.* Wm. J. Workman, L. R. Clavenger, *et al.*, D. C. No. 29092, charging possession of illicit alcohol still at 973 Cullerton St., Chicago, Ills. (7 counts).
6	April 1937 Grand Jury List containing list of 26 indictments and no bills returned.
7	Photo of building at 973 W. Cullerton St., Chicago, Morgan & Cullerton Streets, S. E. view.
8	Photo of interior of same, showing tanks, 5th floor, north of still.
9	Photo of interior of same showing boiler, 6th floor, east of condensers.

Exhibit No.	Description.
10	Photo of interior of same showing tank, 6th floor, N. W. corner, together with steel drums.
11	Photo of interior of same showing condensers, S. W. corner, 6th floor.
12	Photo of interior of same showing mash vats, 6th floor, N. E., and along east wall.
13	Photo of interior of same, mash vats, 5th floor, N. E. corner.
14	Photo of interior of same showing blower system and vat on 6th floor, S. E. corner.
15	Photo of interior of same showing blowers, 5th floor, east of still columns.
16	Photo of interior of same showing elevators, dismantled condenser and 2 dismantled boilers (no legend on picture).
17	Photo of interior of same showing still columns and an engineer's post, 5th floor, S. W. corner.
18	Photo of interior of same showing still columns on 5th floor, S. W. corner.
19	Photo of Steve Schiavone (apparently Alcohol Tax Unit official photo).
20	Photo of interior of building at 973 West Cullerton St., Chicago, showing chart, 5th floor, near south wall, S. E. corner of room.
21	Photo of building showing used boiler plate and timber piers.
22	Photo of interior of building showing metal boxes, planks of various sizes and general debris.
23	Photo of interior of building; view of used boiler plate.
24	Photo of interior of 973 West Cullerton St., Chicago, showing alcohol racker near S. E. section, 4th floor.
25	Photo of interior of building showing used boiler plate.
26	Photo of interior of building showing used boiler plate.
27	Photo of interior of building showing used boiler plate.

Exhibit No. Description.

28 Photo of interior of building showing used boiler or still plates.

29 Photo of interior of building showing general debris.

30 Copy of Exhibit 24.

31 Photo of interior of building showing punctured steel drums.

32 Photo of interior of building showing debris in the nature of lumber, pasteboard packing boxes and white cakes.

33 Photo of interior of building showing used lumber.

34 Photo of interior of 973 Cullerton St., Chicago, showing still base, S. W. corner, and 4th floor stairs to 5th floor.

35 Indictment April, 1935, U. S. *vs.* Wm. J. Workman, Bernard Hanse Stephensen and others, D. C. No. 28870, charging defendants carried on business of rectifier without paying tax at 973 Cullerton, Chicago (9 counts).

37 Report of Internal Revenue Service, Alcohol Tax Unit, dated December 31, 1937, in regard violation of I. R. L. laws by Clemens W. Dowiat and Anthony Hodorowicz, concerning premises at 6949 Stony Island Ave., Chicago, Illinois; report contains seizure list, statements of witnesses signed by name, and chemist's report.

38 Pencil sketch of vicinity of 70th to 69th Streets on Stony Island Ave., Chicago, Illinois.

39 Photo of front of 120-124 E. 118th Place, showing house, gate and store.

40 Photo of front of 120-124 E. 118th Place, showing gate and store.

41 Photo showing rear of 120-124 E. 118th Place; interior view of three-section metal container.

42 Photo, rear same address, showing building entrance.

43 Photo, rear, same address, 120-124 E. 118th Place, showing steam boiler.

Exhibit No.	Description.
44	Photo, rear, same address, 120-124 E. 118th Place, showing pipe connection in hole in pavement.
45	Photo, rear of same, showing alley.
46	Photo, rear of same, showing wooden wall with hole in same leading to hole in concrete wall.
47	Photo, rear of same, showing alcohol dispensing tank.
48	Photo, rear of same, showing condensor (cut in two).
49	Photo, rear of same, showing smashed condensor, punctured 5 gallon cans and larger cans.
50	Photo, rear of same, showing exit to street.
51	Photo, rear of same, showing cans and vats.
52	Petition for Probation of Frank and Peter Hodorowicz and Clem Dowiat, United States *vs.* Hodorowicz, *et al.*, D. C. No. 31014.
53	Order by Judge Woodward granting leave to file the aforesaid Petition for Probation and staying mandate.
54	"Petition of defendants to suppress evidence heretofore obtained on unlawful search and seizure". United States *vs.* Peter Hodorowicz (3 pages). (Copy.)
55	Indictment—U. S. *vs.* Clemens W. Dowiat and others, D. C. No. 30794, charging possession of a still (3 counts).
56	Photo, rear of 120-124 E. 118th Place, showing lead pipe with two-section metal cooker.
57	Photo, rear of same, view showing general collection of pipe, apparatus, tin wash boiler, 5 gallon can.
58	File No. 19574 of Commissioner showing notations of preliminary examination before Com'r Walker, together with recognizance of bail.
59	Commissioner File No. 19572, search warrant and affidavits for premises at 128-30 East 118th Pl., Chicago, Illinois.
60	Commissioner File No. 19077, containing complaint *vs.* Walter Hort.

Exhibit No. Description.

61 Commissioner File No. 19076, containing complaint *vs.* Peter Hodorowicz.

62 Commissioner File No. 19087, containing complaint *vs.* Michael Hodorowicz and Walter Hort.

63 Commissioner File No. 19427, containing complaint *vs.* Clem Dowiat.

64 Commissioner File No. 20478, complaint and recognizance of bail of Walter Kwiatowski.

65 Commissioner File No. 19893, pertaining to Carl Swanson.

66 Commissioner File No. 19888, pertaining to Anthony Hodorowicz and Clemens Dowiat, complaint and recognizance of bail.

67 Commissioner File No. 20642, complaint *vs.* Walter Buchaniec, Pete Mackiewicz, Joseph Netko, Herman David and Richard Clement.

68 Commissioner File No. 18978, complaint *vs.* Stanley Wisniewscki, Chester Wisniewscki (with aliases), and Ralph Sharp.

70 Envelope containing Kretske's business card.

71 Photo showing mash vat after destruction, 7915 Saginaw Ave., Chicago, Ill.

72 Photo showing rear of premises 7915 Saginaw Ave., Chicago, Ill.

73 Photo showing still and mash vat, 7915 Saginaw Ave.

75 Photostatic copy of Bank Statement, South Chicago Savings Bank of Walter Kwiatowski, No. 74437, June 8, 1938 to January 1, 1940, inclusive.

76 Photostatic copy of Bank Statement, South Chicago Savings Bank of Walter Kwiatowski, account No. 74437, from February 16, 1931 to April 28, 1938, inclusive.

77 Photostatic copy of Bank Savings Withdrawal Receipt, (So. Chicago Savings Bank), signed by Walter Kwiatowski, in the amount of $700.00.

78 Photostatic copy of Withdrawal Receipt, South Chicago Savings Bank, in the amount of $3,750, signed by Walter Kwiatowski.

Exhibit No.	Description.
79	Photo of Vitale seizure taken in sheriff's office.
80	Photo of Vitale seizure taken in sheriff's office.
81	Photo of Vitale seizure taken in sheriff's office.
81A	Report of Internal Revenue Service, Alcohol Tax Unit, dated July 14, 1937, case 4570-M, pertaining to Victor Raubunas, Louis Kaplan, Adam Widzes, *et al.*, concerning premises at 2524-34 South Western Ave., Chicago, Illinois, with seizure list, together with statements of witnesses.
82	Photo showing Douglas Blvd. and Kedzie Ave. looking N. E.
83	Photo showing Kedzie Ave. and North Drive on Douglas Blvd., showing Joseph Mirsky's Delicatessen, 3160 W. Douglas Blvd.
84	Statement of Victor Raubunas, dated July 27, 1939 (3 pages).
85	Photos of intersection of Kedzie and Douglas.
86	Same.
87	Same.
88	Same.
89	Same.
90	Photo, view through glass front of Kaufman's Delicatessen at Douglas and Kedzie.
91	Photo of news stand at Douglas and Kedzie.
93	July 1937 Grand Jury List together with notations of 85 true bills and no bills and various memoranda.
94	October 1937 Grand Jury List with memoranda of 88 true bills or no bills and other notations.
95	Grand Jury Minutes—May 1938 List.
96	Transcript of testimony taken before Grand Jury May 17, 1938, case of U. S. *vs.* Louis Kaplan, *et al.* (50 pages).
97	Photo, exterior view distillery building, Spring Grove, Ill.
98	Photo, equipment, second floor of same.
99	Photo, vat on second floor of same.

Exhibit No.	Description
100	Photo, vat, second floor of same.
101	Photo, vat, second floor of same.
102	Photo, vat, second floor of same.
103	Photo, equipment, first floor of same.
104	Photo, exterior view of distillery building showing smoke stack (rear).
105	Photo, exterior view across railroad tracks of distillery building.
106	Photo, vat, second floor of same.
107	Photo, rear side distillery building, Spring Grove, Ill.
108	Photo—boiler, first floor, Spring Grove distillery.
109	Photo—vat and equipment, same.
110	Photo, exterior distillery building, showing mill pond.
111	Photo, equipment, first floor, distillery building.
112	Photo, vats, second floor, distillery building.
113	Report of Internal Revenue Service, Alcohol Tax Unit, Chicago, Illinois, dated July 2, 1937, their own case No. 4957-M, concerning violation of internal revenue laws by carrying on business of a distiller, by possession and control of a still, etc. at Spring Grove, Illinois, by Louis Kaplan, Victor Raubanas, Edward R. Dewes, Stanley Slesuraitis, Joseph F. Cole, Louis Pregenzer, Lincoln Rankin, Ralph Bogush, Joe Fernandez and Ceil Simms, containing narrative history of evidence, seizure, statements of witnesses, chemist's report, with finger print reports of Louis Kaplan, Lincoln Rankin and Louis Pregenzer.
114	Statement of Edward R. Dewes to W. S. Devereaux, Special Agent F. B. I., dated July 27, 1939, re payments to Norton Kretske in connection with both "Arlington Heights" and "Spring Grove", containing five pages.
115	Statement of Edward R. Dewes to W. S. Devereaux, Special Agent F. B. I., dated October 20, 1939, containing ten pages, concerning setting up

Exhibit No.	Description
	and operation of "Arlington Heights" and "Spring Grove" stills, and conversations with Tony Horton, Louis Kaplan and Norton Kretske concerning payments to Mr. Kretske for "fixing of cases."
116	Photo showing exterior of John Briatta & Sons Barber Shop, 1062 West Polk Street.
117	Photo showing exterior of Briatta's Barber Shop, 1062 West Polk Street. (Photo taken from diagonal cross street).
118	Photo taken by Alcohol Tax Unit, Case No. 3611-M, of Albert Yario, alias Sheeny Alberts. Front and side views.
119	Photo of Nick Gerardi, alias Gerard.
121	Letter from Robert B. Ritter of Alcohol Tax Unit, Chicago, Illinois, dated November 10, 1938, in re Walter Kwiatkowski (their case No. I. N. 2431), asking that proceedings be again started against Kwiatkowski.
122	Photo, front view of premises at 6309 Eggleston Avenue.
123	Photo showing view of alcohol cans and mash vats after destruction of 6309 Eggleston Avenue.
124	Photo showing still after destruction at 6309 Eggleston Avenue.
125	Photo showing still, condenser and mash vats at 6309 Eggleston Avenue.
126	Photo of rear view of entrance to still room at 6309 Eggleston Avenue.
127	Photo of still, vats and condenser at 6309 Eggleston Avenue.
128	Original and copy of statement by Abraham H. Cohen, containing four pages, concerning setting of bond and making of bond of Widzes and representation by Cohen of Widzes.
129	File envelope in case of U. S. *vs.* Stanley Slesuraitis, Joseph F. Cole, Louis Pregenzer, Lincoln Rankin and Ralph Bogush, D. C. 30992, bearing various notations as to disposition of the case.

Exhibit No.	Description
130	File envelope in case of U. S. *vs.* Louis Kaplan, Edward R. Dewes, Victor Raubanas, Joseph F. Cole, Louis Pregenzer, Lincoln Rankin and Ralph Bogush, D. C. 31591, bearing notations as to sentencing of defendants
131	Photostatic copy of notice of Attorney Peter P. Passman of presentation of petition to vacate orders forfeiting bonds and issuing bench warrants in case of U. S. *vs.* Joseph Netko, Case No. 31458.
132	Photostatic copy of petition to vacate orders forfeiting bonds and issuing bench warrants in case of U. S. *vs.* Joseph Netko, Case No. 31458.
133	Commissioner's File No. 19788 concerning Emil H. Beisner, Edward Farber, Adam Widzes, George Neiss, containing complaint alleging installation of 17,000 gallons of mash and 2 gallons alcohol in a building on the Emil Beisner farm at Arlington Heights, Cook County, Illinois, bearing notation on face thereof of appearance of Abraham H. Cohen for Widzes.
134	Sealed envelope containing receipt of William M. Brantman.
135	Photo, by Alcohol Tax Unit, Case No. 3883-M, of Fred Blumenthal, alias Fred Blum. Front view.
136	Letter from Assistant U. S. Attorney Alexander M. Campbell, Fort Wayne, Indiana, to Attorney Alfred E. Roth, dated July 15, 1939, in re U. S. *vs.* Edward Wroblewski, and stating that defendant Wroblewski changed his plea to guilty and on May 5, 1939, was sentenced to 18 months and fined $500.00.
137	Letter from Alexander M. Campbell, Assistant U. S. Attorney, South Bend, Indiana, to Attorney Alfred E. Roth, dated October 7, 1938, in re U. S. *vs.* Edward Wroblewski, stating copy of indictment enclosed and the case is to be called during the Hammond sitting of the Federal Court.
138	Photo showing vat on Martin W. Mares farm, McHenry County, Illinois.

Exhibit No.	Description
139	Photo showing feed tank on Martin W. Mares farm, McHenry County, Illinois.
140	Photo showing vat and equipment on Martin W. Mares farm, McHenry County, Illinois.
141	Photo showing barn on the Martin W. Mares farm, McHenry County, Illinois.
142	Photo showing barn loft on the Martin W. Mares farm, McHenry County, Illinois.
143	Photo showing cookers on the Martin W. Mares farm, McHenry County, Illinois.
144	Photo showing cut away wall on the Martin W. Mares farm, McHenry County, Illinois.
145	Photo showing vat on the Martin W. Mares farm, McHenry, Illinois.
146	Photo showing barn on the Martin W. Mares farm, McHenry County, Illinois.
147	Photo, view of cookers and equipment, on the Martin W. Mares farm, McHenry County, Illinois.
148	Photo showing vat on the Martin W. Mares farm, McHenry County, Illinois.
149	Photo showing boilers on the Martin W. Mares farm, McHenry County, Illinois.
150	Photo of general view of house and out-buildings on the Martin W. Mares farm, McHenry County, Ill.
151	Photo of view of out-buildings on the Martin W. Mares farm, McHenry County, Illinois.
152	Photo, view of equipment on the Martin W. Mares farm, McHenry County, Illinois.
153	Photo, view of cooker on the Martin W. Mares farm, McHenry County, Illinois.
154	Photo, view of dismantled equipment in the yard of the Martin W. Mares farm, McHenry County, Illinois.
155	Photo, dismantled equipment, interior, on the Martin W. Mares farm, McHenry County, Illinois.

Exhibit No.	Description
156	File in case of U. S. *vs.* Emil H. Beisner, Edward R. Dewes, Victor Raubanas, Case No. 31201, containing photographs of Beisner farm, Alcohol Tax Unit Report, etc., bearing on face of file, notations as to "Sentence of all defendants."
157	File in case of U. S. *vs.* Harry Dukatt, Edward Farber, Jack Weber, Case No. 31193, bearing on its face notations as to disposition or sentence of the defendants. Report of Alcohol Tax Unit on Dominic Gaustella filed in case.
160	Report of Alcohol Tax Unit, dated April 21, 1938, (their case no. 5357-M) concerning the carrying on business of a distiller without giving bond, and carrying on business of a wholesale and retail liquor dealer without having paid special tax by Frank, Peter, Michael, and Anthony Hodorowicz and Clemens D. Dowiat. Report contains statements of witnesses and chemist's report. Contains 167 pages.
161	Indictment, case of U. S. *vs.* Frank Hodorowicz, Michael Hodorowicz, Peter Hodorowicz and Clemens W. Dowiat, Case No. 31013, filed June 3, 1938.
162	Indictment, case of U. S. *vs.* Frank Hodorowicz, Peter Hodorowicz and Clemens W. Dowiat, Case No. 31014, filed June 3, 1938.
163	Exhibits of Alcohol Tax Unit, Case No. 5357-M. (See Exhibit No. 160.)
164	U. S. Attorney's Docket, case of U. S. *vs.* Frank
164a	Hodorowicz, Mike Hodorowicz, Peter Hodorowicz and Clemens W. Dowiat, Case No. 31013. (3 pages.)
165	U. S. Attorney's Docket, case of U. S. *vs.* Leo Vitale, Petro Mando, Dominic Sabatino, Michael Simanello. Case No. 30950. (2 pages.)
166	U. S. Attorney's Docket, case of U. S. *vs.* Louis Pregenzer, Lincoln Rankin and Ralph Bogush, Case No. 31597. (2 pages.)
167	U. S. Attorney's Docket, case of U. S. *vs.* William Alfred Burba, alias William Wroblewski. Case No. 30379. (1 page.)

Exhibit No.	Description
168	U. S. Attorney's Docket, case of U. S. *vs.* Emil H. Beisner, Edward R. Dewes, Victor Raubanas, Edward Farber, Adam Widzes, George Neiss, Leo Duthorn. Case No. 31502. (2 pages.)
169	U. S. Attorney's Docket, case of U. S. *vs.* Emil H. Beisner, Edward R. Dewes, Victor Raubanas. Case No. 31201. (2 pages.)
171	U. S. Attorney's Docket, case of U. S. *vs.* Frank Hodorowicz, Peter Hodorowicz, Clemens W. Dowiat. Case No. 31014. (5 pages.)
172	U. S. Attorney's Docket, case of U. S. *vs.* Stanley Slesuraitis, Chester Chiafalo, Stanley Wawielewski, Carlo Sgaraglino, Stanley Wisniewski, George Miller, Paul Ksiazkiewicz. Case No. 31244. (2½ pages—carbon copy of part of last page.)
173	U. S. Attorney's Docket, case of U. S. *vs.* William J. Workman, L. R. Clavenger, *et al.* Case No. 29092. (3½ pages).
174	U. S. Attorney's Docket, case of U. S. *vs.* Samuel J. Tishman, Nick Girardi, Max Cooper, Andrew Pollard, Walker Matthews. Case No. 30391. (1½ pages, with carbon copy).
175	U. S. Attorney's Docket, case of U. S. *vs.* Walter Buchaniec, Pete Mackiewicz, Herman David, Joseph Netko, Richard Clement, Orland David. Case No. 31458. (3 pages).
176	U. S. Attorney's Docket, case of U. S. *vs.* Clemens W. Dowiat, Anthony Hodorowicz, Carl Swanson. Case No. 30794. 1 page. (Libel).
177	U. S. Attorney's Docket, case of U. S. *vs.* Stanley Slesuraitis, Joseph F. Cole, Louis Pregenzer, Lincoln Rankin and Ralph Bogush. Case No. 30992. (2 pages).
178	U. S. Attorney's Docket, case of U. S. *vs.* Stanley Slesuraitis, Chester Chiafalo, Stanley Wisniewski, George Miller, Paul Ksiazkiewicz. Case No. 31244. (2 pages).
179	U. S. Attorney's Docket, case of U. S. *vs.* Michael F. Donohue, Thomas J. O'Brien, Stanley Slesur, Lincoln Rankin. Case No. 31257. (1½ pages).

Exhibit No. Description.

180a Appellant's Brief. In the U. S. Circuit Court of Appeals for the Seventh Circuit. Case No. 6580. U. S. *vs.* About 151,682 Acres of Land in McHenry County. Illinois, and Certain Personal Property, and U. S. *vs.* Joe Lojk.

180b Appellant's Brief. In the U. S. Circuit Court of Appeals for the Seventh Circuit. Case No. 6579. U. S. *vs.* About 151,682 Acres of Land in McHenry County, Illinois, and Certain Personal Property, and U. S. *vs.* John Jursich and Elinor Gladys Jursich.

186c Complaint by Austin J. Kennedy, Investigator, Alcohol Tax Unit, against Edward Wroblewski, dated May 6, 1938.

187 Appellant's Brief. U. S. Circuit Court of Appeals for the Seventh Circuit. Case No. 6860. U. S. *vs.* William Alfred Wroblewski and Edward Wroblewski.

190 Commissioner's File No. 20970 in re Edward Wroblewski and Lena Basso, containing certified copy of indictment in case of U. S. *vs.* Orville Modlin, *et al.* Case No. 6953. From District Court of the Southern District of Indiana, together with capias.

191 Appellant's Brief. U. S. Circuit Court of Appeals for the Seventh Circuit. Case No. 6774. U. S. *vs.* John Sebo.

192 Commissioner's File No. 20783, pertaining to Louis Bernstein, Paul Svec, Tony Naples, containing complaint against those named.

194 Transcript of Record. Case No. 6579. U. S. *vs.* About 151,682 Acres of Land in McHenry County, Illinois and Certain Personal Property, and U. S. *vs.* John Jursich and Elinor Gladys Jursich. Appeal to the U. S. Circuit Court of Appeals for the Seventh Circuit.

195 Indictment, case of U. S. *vs.* Harry Dukatt, Edward Farber, Jack Weber, Case No. 31193. Charging possession of a still located at McHenry County, Illinois. (9 counts).

Exhibit No.	Description.
196	Indictment, Case of U. S. *vs.* Myron Mann, John Vancheri, Harry Dukatt, Arnold Galloni, Dominic Guastella, Art Stern. Case No. 31449. Charging possession of a still in a 5-story brick commercial type building located at 809 East 40th Street, Chicago, Illinois.
197	Photostatic copy of letter from William J. Campbell, U. S. Attorney, to Daniel D. Glasser, dated March 17, 1939, containing request for Mr. Glasser's resignation.
199	Mimeographed copy of Circular No. 2743, dated August 28, 1935, by Stanley Reed, Acting Attorney General, addressed to all U. S. Attorneys—in re policy to be pursued in prosecution of internal revenue liquor cases.
202	Letter from Daniel D. Glasser to Bishop Sheil re-enlisting pastors in campaign to stop illicit distillery, dated Nov. 21, 1938.
203	Inter-office memorandum to Mr. Campbell from Daniel D. Glasser dated January 6, 1939, in re Mitchell Brewing Company.
204	Certified copy of warrant for Pete Horodrowicz and Walter Hort dated January 13, 1937, and affidavit of complaint for warrant for Peter Horodrowicz and Walter Hort, both sealed by Schuyler C. Dwyer, U. S. Commissioner for the Northern District of Indiana, Hammond Division, together with a transcript of the record of the proceedings before the U. S. Commissioner for the Hammond Division of the Northern Indiana District in the case of U. S. *vs.* Peter Horodrowicz and Walter Hort.
207	Written document containing quotation from Justice Sutherland in regard to the duty of the U. S. Attorney.
209	Sealed envelope entitled "Personnel Record" of D. Glasser.
210	File wrapper and contents in case of U. S. *vs.* Leo Vitale, Petro Mando, Dominic Sabatino, Michael Simanello. Case No. 30950.

Exhibit No.	Description.
212	File wrapper and contents in case of U. S. *vs.* Louis Bernstein and Tony Naples. Case No. 31451.
214	File wrapper and contents in case of U. S. *vs.* Joseph Digirolamo, *et al.* Case No. 30621. (Re—Indictment, D. C. 30351).
215	File wrapper in case of U. S. *vs.* Joseph Digirolamo, Mike Anzaldo, Frank Brown, Angelo Baraconi, John Marinto, John Sardo, Tony Laudicena, Joseph Andonna, Paul Andonna, Geno Andonna, Phillipo Dimeino. Case No. D. C. 30351.
216	U. S. Attorney's Docket, case of U. S. *vs.* Joseph Digirolamo, *et al.* Case No. D. C. 30621. (3½ pages).
217	Daily reports of Inspector B. R. Smallwood, Special Investigator for the Alcohol Tax Unit, for period from July 1, 1937, to July 31, 1937, inclusive.
217a	U. S. Attorney's Docket, case of U. S. *vs.* Joseph Digirolamo, Mike Anzaldo, Frank Brown, Angelo Baraconi, John Marinto, John Sardo, Tony Laudicena, Joseph Andonna, Paul Andonna, Geno Andonna, Phillipo Dimeino. Case No. D. C. 30351. (4½ pages).
218	Daily reports of Inspector B. R. Smallwood, Special Investigator for the Alcohol Tax Unit, for period from June 1, 1937 to June 30, 1937, inclusive.
218a	U. S. Attorney's Docket, case of U. S. *vs.* Albina Zarrattini and Sebastiano Larderuccio. Case No. D. C. 30550. (1 page).
219	Daily reports of Inspector B. R. Smallwood, Special Investigator for Alcohol Tax Unit, for period from May 1, 1937 to May 29, 1937, inclusive.
220	Daily reports of Inspector B. R. Smallwood, Special Investigator for Alcohol Tax Unit, for period from April 1, 1937 to April 30, 1937, inclusive.
220a	U. S. Attorney's Docket, case of U. S. *vs.* Samuel J. Tishman, Nick Girard. Case No. D. C. 30926. (1 page.)

Exhibit No. Description.

221 Daily reports of Inspector B. R. Smallwood, Special Investigator for Alcohol Tax Unit, for period from March 1, 1937 to March 31, 1937, inclusive.

221a U. S. Attorney's Docket, case of U. S. *vs.* Jack Weber. Case No. D. C. 30929. (1 page.)

222 Daily reports of Inspector B. R. Smallwood, Special Investigator Alcohol Tax Unit, for period from February 1, 1937 to February 27, 1937, inclusive.

222a U. S. Attorney's Docket, case of U. S. *vs.* Louis Nuzzo, John Jursich, Stanley Bronkowski, Dominic Guastello, Charles Banks, Joseph Severino. Case No. D. C. 30904. (2½ pages.)

223 Daily reports of Inspector B. R. Smallwood, Special Investigator Alcohol Tax Unit, for period from January 4, 1937 to January 30, 1937, inclusive.

224 Daily reports of Inspector Thomas Bailey, Special Investigator Alcohol Tax Unit, for period from January 1, 1938 to January 31, 1938, inclusive.

224a U. S. Attorney's Docket, case of U. S. *vs.* Walter Kwiatowski. Case No. 31627. (½ page.)

225 Daily reports of Thomas Bailey, Special Investigator Alcohol Tax Unit, for period from April 1, 1938 to April 30, 1938, inclusive.

225a U. S. Attorney's Docket, case of U. S. *vs.* About 151,682 Acres of Land in McHenry County, Illinois and Certain Personal Property. Case No. 46331. (2½ pages.)

226 U. S. Attorney's Docket, case of U. S. *vs.* Clemens W. Dowiat, Anthony Hodorowicz, Carl Swanson. Case No. 30794. (1 page.)

227 U. S. Attorney's Docket, case of U. S. *vs.* John Kazmierczak. Case No. 30448. (1 page.)

228 File of Alcohol Tax Unit, Chicago, Ill. Their Case No. IN-2193, in re Clemens W. Dowiat and John Kazmierczak, containing seizure, statement of witnesses, chemist's report, and Federal Bureau of Investigation finger print report of

Exhibit No.	Description.
	Clemens W. Dowiat and Peter Hodorowicz. (Regarding property at Northwest Corner 124th St. and Ashland Avenue, Calumet Park, Illinois.)
229	File, case of U. S. *vs.* One 1937 Chrysler Sedan—Automobile Factory No. 6915369—Case No. D. C. 47442, with contents.
230	Report of Alcohol Tax Unit, Chicago, Ill. regarding Walter Kwiatkowski, their case No. IN-2431, concerning premises at 7915 Saginaw Ave., Chicago, Ill., containing statements of witnesses and Federal Bureau of Investigation finger print record of Walter Kwiatkowski, dated November 9, 1938. Also, report of Alcohol Tax Unit, Chicago, Ill. in re same person and premises with seizure list and statements of witnesses.
232	Photostatic copy of Notice by Attorney Edward J. Hess to the U. S. Attorney, Chicago, Ill., regarding presentation by Attorney Hess to the District Court of a motion to vacate and set aside bond forfeitures entered as to Joseph Netko, Walter Buchaniec, Pete Mackiewicz, dated May 15, 1939, in case of U. S. *vs.* Netko, *et al.* Case No. 31458.

And afterwards, to wit, on the 17th day of May, A. D. 1940, being one of the days of the regular May term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Patrick T. Stone, District Judge, appears the following entry, to wit:

IN THE DISTRICT COURT OF THE UNITED STATES

For the Northern District of Illinois,

Eastern Division.

The United States of America
vs.
Daniel D. Glasser, *et al.*
} No. 31825.

ORDER CERTIFYING ORIGINAL EXHIBITS.

It is Hereby Ordered that all the original physical exhibits introduced on behalf of the United States, and all the original physical exhibits introduced on behalf of all the defendants on the trial of the above cause, be certified and sent by the Clerk of this Court to the Circuit Court of Appeals for the Seventh Circuit.

It Is Hereby Further Ordered that the said exhibits be and the same are by reference incorporated in and made a part of the bill of exceptions in said cause.

Enter:

Patrick T. Stone,
Judge.

Dated at Chicago, Illinois
May 17, 1940.

Approved:
William J. Campbell,
United States Attorney.

Approved:
Daniel D. Glasser,
Norton I. Kretske,
Alfred E. Roth,
Appellants.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court at my office, in the City of Chicago, in said District this 2nd day of August, A. D. 1940.

Hoyt King,
(Seal) *Clerk.*

Endorsed: Filed Aug. 2, 1940. Kenneth J. Carrick, Clerk.

And afterwards, to-wit: On the sixth day of August, 1940, there was filed in the office of the Clerk of this Court, in causes Nos. 7315, 7316 and 7317, a supplemental certificate to exhibits, which said supplemental certificate is in the words and figures following, to-wit:

Received of William J. Campbell, United States District Attorney, the following Exhibits which were introduced in the case of United States *vs.* Daniel D. Glasser, *et al*, in the District Court of the United States of America, in the Northern District of Illinois, Eastern Division.

Supplemental Exhibit List.

Exhibit No.	Description.
211	United States Attorney's docket sheets in the case of United States *vs.* Phillip Siegel. Case No. D. C. 30923.
211A	United States Attorney' s file in the case of United States *vs.* Alvina Zarrattini and Sebastiano Larderuccio. Case No. D. C. 30550. (This exhibit contains a complete file.)
231	June 7, 1937 Grand Jury list, together with notations of True Bills and No Bills, and various memoranda. (Judge Wilkerson's Grand Jury.)

Northern District of Illinois, } ss.
Eastern Division. }

Hoyt King, Clerk of the District Court of the United States for the Northern District of Illinois, do hereby certify that I herewith transmit to the United Circuit Court of Appeals for the Seventh Circuit Supplemental Exhibit List in the case entitled United States of America *vs.* Daniel D. Glasser, *et al*, D. C. 31825, said Exhibits are marked as follows, to-wit: Exhibit No. 211, 211a, 231.

In Testimony Whereof I have hereunto set my hand and affixed the seal of said Court at my office, in the City of Chicago, in said District this 5th day of August, A. D. 1940.

Hoyt King,
(Seal) *Clerk.*

Endorsed: Filed Aug. 6, 1940. Kenneth J. Carrick, Clerk.

And afterwards, to-wit: On the seventh day of August, 1940, in cause No. 7315, there was filed in the office of the Clerk of this Court, a petition for order on U. S. Attorney to produce missing exhibits, which said petition is in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

United States of America,
Plaintiff-Appellee,
vs.
Daniel D. Glasser.
Defendant-Appellant.
No. 7315.

PETITION FOR ORDER ON UNITED STATES ATTORNEY TO PRODUCE MISSING EXHIBITS.

To the Honorable Judges of Said Court:

Now come, Daniel D. Glasser, Norton I. Kretske and Alfred E. Roth, appellants herein, and respectfully represent unto your Honors:

(1) That the jury returned the verdict in the District Court in the above entitled cause on March 8, 1940 and that on the same day an Assistant United States Attorney, Francis McGreal, asked the defendant, Alfred E. Roth, if he would have any objection to the District Attorney taking the Exhibits for the purpose of making a list of the same, to which the defendant, Alfred E. Roth, acquiesced.

(2) That the Notice of Appeal in this cause was filed on April 26, 1940, and that subsequently thereto on May 17, 1940, an order was entered that all the original physical exhibits introduced in the case be certified and sent by the Clerk of the District Court to the Circuit Court of Appeals for the Seventh Circuit.

(3) That the transcript of record herein was filed on May 28, 1940.

(4) That on July 31, 1940, the defendants, Daniel D. Glasser and Alfred E. Roth, called at the office of the Clerk of the Circuit Court of Appeals for the purpose of examining the Exhibits and were then and there informed that no exhibits had been forwarded to the Clerk of this Court.

(5) That the Clerk of this Court then called the Clerk of the District Court and was referred to Mr. Francis McGreal, an Assistant United States Attorney, who informed him that they were waiting for copies of certain exhibits which they had the previous week requested of the defendant, Daniel D. Glasser.

(6) That on the same day, July 31, 1940, after receiving the call from the Clerk of this Court, the United States Attorney delivered certain exhibits to the Clerk of the District Court who certified and delivered the same to the Clerk of this Court on August 2, 1940.

(7) That on August 3, 1940, the list of Exhibits as certified to this Court were examined and many exhibits were found to be missing.

(8) That it is necessary for your petitioners to have before this Court all the exhibits so that your petitioners might make reference to the same in the preparation of their brief and so that they may be referred to in their oral argument and that their rights will be seriously prejudiced without all of the exhibits before this Court.

(9) Wherefore, the petitioners pray that an order be entered herein directing the United States Attorney for the Northern District of Illinois to deliver to the Clerk of this Court all the Exhibits which have not already been submitted to the Clerk of the District Court for certification and transmittal, and upon the failure of the United States Attorney to deliver said missing exhibits to this Court within a reasonable time to be fixed by this Court that the judgments of the lower Court be reversed or for such other and further orders in the premises as this court shall seem meet and just.

Daniel D. Glasser,
Norton I. Kretske,
Alfred E. Roth.

Endorsed: Filed Aug. 7, 1940. Kenneth J. Carrick, Clerk.

And afterwards, to-wit: On the twelfth day of August, 1940, in cause No. 7315, there was filed in the office of the Clerk of this Court, an answer to petition for order on U. S. Attorney to produce missing exhibits, which said answer is in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

United States of America,
Plaintiff-Appellee,
vs.
Daniel D. Glasser.
Defendant-Appellant.
No. 7315.

ANSWER TO PETITION FOR ORDER ON UNITED STATES ATTORNEY TO PRODUCE MISSING EXHIBITS.

The appellee, United States of America, answering the Petition herein by William J. Campbell, its attorney for the Northern District of Illinois, admits the allegations contained in Paragraphs (1), (2), (3), (4), (5), and (6), but denies that on August 3, 1940, many exhibits were found to be missing from the list of exhibits certified to this Court.

The appellee denies the averments set forth in Paragraph (7) of appellant's Petition, in that many of the certified exhibits were found to be missing. Further, that on August 2, 1940, when said exhibits were delivered to Mr. Kenneth J. Carrick, Clerk of the Circuit Court of Appeals, he assigned Mr. Blanchard, one of his Assistants, to examine and check the certified list of exhibits. This examination was made in the presence of the defendants, Daniel D. Glasser and Alfred E. Roth. After the examination was completed, Mr. Blanchard reported to Mr. Kenneth J. Carrick that the only document found to be missing was Exhibit Number 4, which had been certified on the list of exhibits but was not found among them.

The appellee further states the fact to be that Exhibit 4 for identification is a certain criminal docket kept and maintained in the United States Attorney's Office; that it was marked for identification during the trial of the case and that several sheets were removed from the same, which sheets were formally introduced into evidence and became exhibits in the case.

This appellee further states that all of the exhibits introduced in the trial of the case, with the exception above stated, are in the possession of the Clerk of the Circuit Court of Appeals.

This appellee further states that the relief prayed for in Paragraph (9) should be respectfully denied.

William J. Campbell,
United States Attorney for the Northern District of Illinois.

Endorsed: Filed Aug. 12, 1940. Kenneth J. Carrick, Clerk.

And on the same day, to-wit: On the twelfth day of August, 1940, in cause No. 7315, there was filed in the office of the Clerk of this Court, a reply to answer of U. S. Attorney for order to produce missing exhibits, which said reply is in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

United States of America,
Plaintiff-Appellee,
vs.
Daniel D. Glasser.
Defendant-Appellant.
} No. 7315.

NOTICE.

To: William J. Campbell,
United States Attorney,
Chicago, Illinois.

Please Take Notice that on August 12, 1940, we shall file with the Clerk of the United States Circuit Court of Appeals for the Seventh Circuit a petition to be presented to the Court, a copy of which is hereto attached and served upon you.

Daniel D. Glasser,
Norton I. Kretske,
Alfred E. Roth.

Received a copy of the above Notice and Petition therein referred to.

William J. Campbell.
United States Attorney,
By F. J. McGreal.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

United States of America,
Plaintiff-Appellee,
vs.
Daniel D. Glasser.
Defendant-Appellant.
No. 7315.

REPLY TO ANSWER OF UNITED STATES ATTORNEY FOR ORDER TO PRODUCE MISSING EXHIBITS.

To the Honorable Judges of Said Court:

Now comes Daniel D. Glasser, Norton I. Kretske and Alfred E. Roth, and for reply to the answer of the United States Attorney to the petition heretofore filed by Appellants for an order directing the United States Attorney to deliver to the Clerk of this Court all the exhibits which have not already been submitted to the Clerk of the District Court for certification and transmittal, state:

That the answer states, among other things, as follows:

> "This appellee further states that all of the exhibits introduced in the trial of the case, with the exception above stated, are in the possession of the Clerk of the Circuit Court of Appeals."

Petitioners respectfully represent that the fact is that the following exhibits which were all in the possession of the United States Attorney, are not among those which have been certified to the Clerk of this Court:

Exhibit 198
Exhibit 205
Exhibit 206
Exhibit 208
Exhibit 36
Exhibit 182
Exhibit 92

Petitioners further represent that Exhibit 4 was the entire docket of criminal cases and was introduced as a "bound, closed case docket", and that same has not been certified to the Clerk of this Court.

Petitioners further represent that there was entered into a stipulation with Daniel D. Glasser and the United States Attorney to certify to the clerk of the District Court for a transmittal to the clerk of the United States Circuit Court of Appeals, the United States Commissioner Walker's file in the case of the United States *versus* Louis Laplan, which has not, to this date, been certified to this court.

That the appellants, Glasser and Roth, admit that they were in the office of the clerk of the United States Circuit Court of Appeals on August 2, 1940, that when they arrived at the said Clerk's Office they found waiting an Alcohol Tax Unit agent, together with an Assistant United States Attorney, who desired to check the exhibits, together with the said appellants. The said appellants allege that the clerk, through his deputy, performed the duty of checking the exhibits delivered to the said clerk, and that while the said appellants were in the clerk's office on said day they did not check any exhibits, which can be verified by the clerk of this Court.

Petitioners respectfully represent that, as stated in their original petition for the order on the United States Attorney, with reference hereto, it is vital to their interests that all the exhibits which the United States Attorney had in his possession for such a great length of time be certified, and sent to the clerk of this court forthwith, so that the brief of appellants may make reference thereto.

Daniel D. Glasser,
Norton I. Kretske,
Alfred E. Roth.

Endorsed: Filed Aug. 12, 1940. Kenneth J. Carrick, Clerk.

And afterwards, to-wit: On the thirteenth day of August, 1940, in cause No. 7315, there was filed in the office of the Clerk of this Court, an additional answer, which said answer is in the words and figures following, to-wit:

IN THE UNITED STATES COURT OF APPEALS

For the Seventh Circuit.

United States of America,
Plaintiff-Appellee,
vs.
Daniel D. Glasser, *et al.*,
Defendants-Appellants.
No. 7315.

ADDITIONAL ANSWER.

To the Honorable Judges of Said Court:

Now comes William J. Campbell, United States Attorney, and for additional answer to the new matters and things mentioned in the reply herein filed, states the following:

Exhibit 36 is included in the envelope marked Exhibit 229 filed in the office of the Clerk of this Court.

Exhibit 92 is submitted herewith, but this appellee states that this document was merely identified as Exhibit 92, as appears in Book 4, page 511 of the Transcript of Record filed herein. This document was not formerly received in evidence because of an objection raised by counsel for the appellant, Glasser. However, this appellee submits this document for this Court's decision as to whether or not it was an exhibit.

The document referred to as Exhibit 4 is the Closed Docket of Criminal cases of the District Attorney's office. After it was identified, one page was extracted therefrom, being the record in Case Number 29092, United States *vs.* Workman. The entire Criminal Docket was not introduced as an exhibit.

The document referred to as Exhibits 182, 198, 205, 206 and 208 are all defendants' exhibits which did not come into the possession of the United States Attorney at the time of the trial or thereafter and are not now in possession of the United States Attorney or any of his assistants.

The original typewritten stenographic transcript of the trial does not show at page 3231-3232-3234 that documents 205, 206 and 208 were offered and received in evidence, although this notation is made in the Bill of Exceptions heretofore filed, in Book 5, page 1284.

Further answering the reply, this appellee states that no stipulation was entered into with Daniel D. Glasser to certify to the Clerk of the District Court for transmittal to the Clerk of the United States Circuit Court of Appeals the United States Commissioner's file in the case of United States *vs.* Louis Caplan, but states the fact to be that Daniel D. Glasser mentioned this matter to Francis J. McGreal, an assistant United States Attorney, at the time the clerk forwarded the Clerk's Record of Proceedings and was told that since this file was not a part of the Clerk's Record, it could not properly be sent to the Clerk of the Circuit Court of Appeals by the Clerk of the District Court. Further, this document cannot be included as an exhibit by the stipulation of the parties.

An examination of the joint assignment of errors appearing on pages 114 to 129 of the Transcript of Record filed herein indicates no error is predicated upon the introduction of any of the above-mentioned exhibits.

Wherefore, this appellee respectfully suggests that the Petition for an order on the United States Attorney with reference to the exhibits be dismissed.

William J. Campbell,
United States Attorney.

Endorsed: Filed Aug. 13, 1940. Kenneth J. Carrick, Clerk.

And afterwards, to-wit: On the fourteenth day of August, 1940, the following further proceedings were had and entered of record, to-wit:

Wednesday, Aug. 14, 1940.

Court met pursuant to adjournment.

Before:

Hon. J. Earl Major, Circuit Judge.

The United States of America,
Plaintiff-Appellee,
7315 *vs.*
Daniel D. Glasser,
Defendant-Appellant.

The United States of America,
Plaintiff-Appellee,
7316 *vs.*
Norton I. Kretske,
Defendant-Appellant.

The United States of America,
Plaintiff-Appellee,
7317 *vs.*
Alfred E. Roth,
Defendant-Appellant.

Appeals from the District Court of the United States for the Northern District of Illinois, Eastern Division.

It is ordered that all exhibits identified at the trial of this cause which have not already been certified to this Court be transmitted to this Court by the United States District Attorney without prejudice to the right of the District Attorney to dispute the materiality of said exhibits before this Court.

And afterwards, to-wit: On the twenty-seventh day of August, 1940, in cause No. 7315, there was filed in the office of the Clerk of this Court an additional assignment of error, which said additional assignment of error is in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

United States of America,
vs.
Daniel D. Glasser,
Appellant.
No. 7315.

ADDITIONAL ASSIGNMENT OF ERROR.

By leave of Court, Appellant files herein an Additional Assignment of Error, to wit:

The prosecution committed prejudicial error in sending to the jury upon its retirement the document numbered Exhibit 115 (being the statement of Edward R. Dewes dated October 20, 1939), which said document had not been admitted in evidence at the trial.

Daniel D. Glasser,
Appellant.

Dated: August 13, 1940.

Endorsed: Filed Aug. 27, 1940. Kenneth J. Carrick, Clerk.

And on the same day, to-wit: On the twenty-seventh day of August, 1940, in cause No. 7316, there was filed in the office of the Clerk of this Court, an additional assignment of error, which said additional assignment of error, is in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

United States of America,
Plaintiff-Appellee,
vs.
Daniel D. Glasser, *et al.*,
Defendants-Appellants.
No. 7316.

ADDITIONAL ASSIGNMENT OF ERROR AS TO EXHIBIT 115.

By leave of Court, Appellant files herein an Additional Assignment of Error, to wit:

The prosecution committed prejudicial error in sending to the jury upon its retirement the document numbered Exhibit 115 (being the statement of Edward R. Dewes dated October 20, 1939) which said document had not been admitted in evidence at trial.

Norton I. Kretske.

Dated: August 26, 1940.

Approved Aug. 27, 1940.
William M. Sparks,
Circuit Judge.

Endorsed: Filed Aug. 27, 1940. Kenneth J. Carrick, Clerk.

And on the same day, to-wit: On the twenty-seventh day of August, 1940, in cause No. 7317, there was filed in the office of the Clerk of this Court, an additional assignment of error, which said additional assignment of error is in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

United States of America,
Plaintiff-Appellee,
vs.
Daniel D. Glasser, *et al.*,
Defendants-Appellants.
No. 7317.

ADDITIONAL ASSIGNMENT OF ERROR AS TO EXHIBIT 115.

By leave of Court, Appellant files herein an Additional Assignment of Error, to wit:

The prosecution committed prejudical error in sending to the jury upon its retirement the document number Exhibit 115 (being the statement of Edward R. Dewes dated October 20, 1939) which said document had not been admitted in evidence at trial.

Alfred E. Roth.

Dated: August 26, 1940.

Endorsed: Filed Aug. 27, 1940. Kenneth J. Carrick, Clerk.

And afterwards, to-wit: On the fourth day of September, 1940, in cause No. 7315, there was filed in the office of the Clerk of this Court, a motion to suppress the brief of Daniel D. Glasser, which said motion is in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

United States of America,
Plaintiff-Appellee,
vs.
Daniel D. Glasser, *et al.*,
Defendants-Appellants.
No. 7315.

MOTION.

Now comes William J. Campbell, United States Attorney for the Northern District of Illinois, and moves the

Court to suppress the brief of Daniel D. Glasser, filed August 30, 1940, in violation of Rule 22, Subdivision 6 thereof, of the Rules of this Court, and I will support said Motion by the Affidavit of Assistant United States Attorney Francis J. McGreal, which Affidavit is hereto made a part of this Motion.

William J. Campbell,
United States Attorney.

Endorsed: Filed Sept. 4, 1940. Kenneth J. Carrick, Clerk.

And on the same day, to-wit: On the fourth day of September, 1940, in cause No. 7315, there was filed in the office of the Clerk of this Court, points and authorities in support of motion to suppress, etc., which said points and authorities are in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

United States of America,
Plaintiff-Appellee,
vs.
Daniel D. Glasser,
Defendant-Appellant.
} No. 7315.

POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO SUPPRESS BRIEF OF APPELLANT, DANIEL D. GLASSER.

Subsection 4 of Rule 16 of this Court is as follows:

"Statement of Facts. The first paragraph of this subdivision of the brief shall state, briefly and concisely, the nature of the case and its disposition in the District Court. To illustrate:

> "'This action was brought to recover damages occasioned by the alleged negligence of the defendant in driving his automobile. The jury rendered a verdict for the plaintiff upon which the court entered the judgment from which this appeal is taken. The errors relied on arise out of instructions, rulings on evidence, and failure to grant defendant's motion to direct a verdict.'

"Then shall follow a concise statement of the facts, without argument or comment thereon. When the transcript discloses controversy respecting such facts, each version shall be stated. The statement must show the pages of the transcript where the recited facts appear."

This Court, in an Order entered in this case on August 28, 1940, upon a Petition filed by the appellants for leave to file an extended brief of 160 pages, stated as follows:

> "Counsel must bear in mind that, we do not want, and will not permit, extended copying of evidence in the brief. It is neither proper or helpful."

In the case of *Lawson* v. *United States*, 9 F. (2d) 746, at page 747, Judge Evan A. Evans stated as follows:

> "The briefs filed in this case are unfortunately of little help to the court. They totally ignore rule No. 23. No attempt has been made by either counsel to refer to the page of the transcript to support a statement of fact therein appearing. While opposing counsel differ as to the facts, they have rested their case upon their unsupported assertions. We call the attention of the bar to the rules announced by this court October 6, 1925, and we particularly ask for a strict adherence to rule No. 23, subd. 2 (a), respecting the preparation and submission of briefs. Compliance with the rule is not merely a matter of convenience to members of the court, but assists materially in the administration of justice."

Respectfully submitted,

William J. Campbell,
United States Attorney.

Endorsed: Filed Sept. 4, 1940. Kenneth J. Carrick, Clerk.

And on the same day, to-wit: On the fourth day of September, 1940, in cause No. 7315, there was filed in the office of the Clerk of this Court, an affidavit of Francis J. McGreal, which said affidavit is in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

United States of America,
Plaintiff-Appellee,
vs.
Daniel D. Glasser,
Defendant-Appellant.
} No. 7315.

AFFIDAVIT.

State of Illinois } ss:
County of Cook }

Francis J. McGreal, being first duly sworn, on his oath deposes and says that he is one of the Assistant United States Attorneys who participated in the trial of the above cause before the Honorable Patrick T. Stone, United States District Judge, and that on August 30, 1940, there was filed in this Court the brief of Daniel D. Glasser, and that he has personally examined said brief and states the fact to be that said Statement of Facts is not a concise Statement, but that it contains many instances wherein the defendant-appellant argues and comments on the facts.

Affiant further states that in many instances, between pages 1 and 57, the defendant-appellant, in violation of the Rules, has failed to set forth the pages of the Transcript to support his Statement of Fact therein appearing.

Affiant further states that the nature and character of said comments are as follows and appear at the following places:

"The handling of liquor cases is by far the heaviest assignment in the U. S. Attorney's office." (Pages 2-3.)

"Morgan's figures are evidently quite inaccurate." (Page 3.)

"Assuming a like percentage in the Northern District of Illinois, indicates that Glasser handled approximately 1,500 criminal liquor cases during his service in the District Court." (Page 3.)

"• • • wheih did not merit presentation in court." (Page 3.)

"• • • judicial notice will be taken." (Page 3.)

"Judge Igoe's testimony also was that Glasser acted in close cooperation with him." (Page 4.)

"In his supervision of Glasser's work, Judge Igoe was familiar with and approved of Glasser's conduct." (Page 4.)

"• • • also with the conduct of the Hodorowicz cases culminating in the conviction of Frank Hodorowicz, the ringleader." (Page 4.)

"Judge Woodward was prevented, by the objection of the prosecution, in testifying whether Glasser appeared to represent the Government in a proper and conscientious manner." (Page 4.)

"Glasser's work was impeded by conditions effecting the Alcohol Tax Unit." (Page 5.)

"Some of the agents of the Alcohol Tax Unit also were incompetent and some dishonest, but the record does not indicate that Glasser was given any warning or information by which to govern himself in dealing with these agents." (Page 6.)

"Principle witnesses for the prosecution consisted of convicts, some of them presently inmates of penitentiaries or prisons, and practically all of whom had been prosecuted by Glasser." (Page 6.)

"There was no evidence of any kind, either direct or indirect, that Glasser ever received a bribe and none that he ever solicited any." (Page 6.)

"There was no testimony of payment of money to any defendant here in connection with the Svec case, the Jurkas case, the Workman case and the Vitale case." (Page 7.)

"Under leading questioning by the prosecutor • • •." (Page 9.)

"The case is still in the same condition although Swanson has long since admitted his guilt." (Page 10.)

"Under leading questions by the Court • • •." (Page 13.)

"W. Kwiatowski was unintelligible as a witness, so much so that the defense, to expedite the trial, admitted in evidence, by agreement, his written statement to the Government." (Page 13.)

"On cross-examination it clearly appeared that Kwiatowski did not understand the written statement which he had signed for the prosecution." (Page 13.)

"Under leading and repeated questions, witness said * * *." (Page 15.)

"There is no evidence in the record that any report was ever made by the Alcohol agents to Glasser implicating Swanson, Del Rocco or Joppek." (Page 15.)

"This case was not mentioned in either the indictment or the Bill of Particulars." (Page 16.)

"The indictment conflicts with Raubunas' testimony." (Page 17.)

"The indictment is entirely silent." (Page 17.)

"Moreover, in July 1939, eight or nine days after his conviction, Raubunas signed a written statement." (Page 17.)

"At the trial when confronted with the inconsistency between this statement and his testimony * * *." (Page 17.)

"Ostensibly to put him under bond * * *." (Page 17.)

"The witness could not testify about dates." (Page 21.)

"The prosecution did not introduce any of this Transcript of the Grand Jury testimony affecting Kaplan, Raubunas, Dewes and others except a short portion of one of Cole's appearances where most of the questions were regarding his health."

"Raubunas claimed he called them crooks. However, a month later he testified he gave $300.00 to Farber." (Page 23.)

"Raubunas was convicted by Mr. Ward in the Arlington Heights case on the indictment secured by Glasser." (Page 24.)

"After this testimony, the defense filed a praecipe for subpoena for this Bishop as a witness." (Page 25.)

"The praecipe was filed on February 24, 1940. On February 26, which was many days after his previous testimony * * *." (Page 25.)

"Edward Dewes—inmate of the jail at Milan, Michigan, being convicted upon an indictment returned by Glasser—Dewes' testimony regarding the operation and principals of the Arlington Heights still was substantially similar to that of Raubunas up to the point

of the meeting with Horton, Farber and Raubunas in the Insurance Exchange Building." (Page 25.)

"(Note: Beisner and Widzes were subpoenaed by the Government but not used as witnesses.)" (Page 26.)

"This matter was not mentioned in the Bill of Particulars." (Page 30.)

"* * * but the prosecutor was unable to produce any such report." (Page 32.)

"A few months after Glasser's activity in convicting the 12 defendants in the Murdock Farm case, and endeavoring to obtain evidence against Abosketas in that case, renewed activity appeared with respect to prosecution of Abosketas in Wisconsin." (Page 33.)

"Whereupon the Court's questions indicated that he confused the identities of Nick Gerardi and Clementi * * *." (Page 34.)

"The trial Judge, by leading questions, caused Workman to testify that Glasser did not show Judge Sullivan pictures of the still. (Judge Barnes testified that he would not allow prosecutor to show him pictures of a still, that a prosecutor fit for his position knew Judge Barnes' attitude on that (B. E. 1006)." (Page 35.)

Note: This conversation between Glasser and Svec in Glasser's office is listed as Overt Act 22 in the Indictment. (Rec. 19.) (Page 37.)

"There was no testimony that Dowd ever proceeded with the investigation of this matter or ever filed a report on this alleged matter with his superiors or ever presented any such report to the U. S. Attorney or to Glasser." (Page 40.)

"(Note: Investigator Dowd did not deny Glasser's testimony that Dowd suggested a no-bill in one case and an hour in the custody of the Marshal for Vitale." (Pages 41-42.)

"The fact is, as shown by the record and by Judge Barnes' testimony, that the car was ordered returned to Mrs. Rose Vitale and not to Leo Vitale.)" (Page 42.)

(We desire to call to the Court's attention that the use of the brackets found herein embracing certain extracts are used by the defendants in their brief and are not ours.)

"Glasser most emphatically desired to prosecute Kaplan, Raubunas and Dewes, * * *." (Page 46.)

"* * * (this conversation was not denied on rebuttal by Bailey) * * *." (Page 48.)

"* * * (this was not denied by Cloonan)" (Page 52.)

"* * * (here Bailey testified that the conferences out in the jail were held on February 25, 1938)." (Page 53.)

Francis J. McGreal,
Francis J. McGreal,
Assistant United States Attorney.

Subscribed and sworn to before me this 4th day of September, A. D., 1940.

Anna L. Minahan,
(Seal) *Notary Public.*

Endorsed: Filed Sept. 4, 1940. Kenneth J. Carrick, Clerk.

And afterwards, to-wit: On the eleventh day of September, 1940, in cause No. 7315, there was filed in the office of the Clerk of this Court, a memorandum in support of answer to motion to suppress, which said memorandum is in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

United States of America, *Plaintiff-Appellee,* *vs.* Daniel D. Glasser, *Defendant-Appellant.*	No. 7315.

MEMORANDUM IN SUPPORT OF ANSWER TO MOTION OF PROSECUTION TO SUPPRESS BRIEF OF APPELLANT GLASSER.

We respectfully submit that the extraordinary Motion of the prosecution to suppress appellant's brief is frivolous. Its only effects are to impose unnecessary work upon

the Court, to encumber the files of the Court with unnecessary motions, affidavits and answers, to embarrass with unnecessary expense the appellant Glasser, whose limited financial means are known to the prosecution, and to enforce upon appellant's counsel unnecessary labor.

The tactics of the prosecution at the trial rendered the preparation of a proper Statement of Facts unusually difficult and arduous. The oral testimony at the trial covered approximately 4,000 typewritten pages, which resulted in a Bill of Exceptions of about 1500 typewritten pages. The Government introduced also several hundred exhibits comprising about 1000 pages (exclusive of Exhibit No. 4, being copy of docket containing record of about 500 cases, only one or two of which were involved here).

Due to the limits of space in the brief and of time for preparation thereof, appellant's counsel has been unable to analyze and discuss the nature of the contents of these exhibits.

In the preparation of the Statement of Facts, the use of summary statements of fact and of statements of ultimate facts, always desirable, became more useful than in the ordinary case due to the great length of the trial and the nature of the testimony for the prosecution. To the use of such summary statements of fact and statements of ultimate facts, the prosecution objects, with the unfounded claim that such are not permitted by the rules of this Court.

The frivolous nature of the Motion of the prosecution is apparent from every viewpoint: First, the Motion is an extraordinary one, and the use attempted by the prosecution is not sanctioned by good practice or a regard for proper procedure. In a long experience in the Appellate Courts of the National and State Governments, appellant's counsel has never heard of a Motion to suppress a brief for other than scandalous or offensive matter. Counsel is confident that the records of this Court will show no similar Motion, certainly none that has been given consideration by the Court.

Again, the hasty, ill-considered and frivolous nature of the Motion of the prosecution appears in its failure to cite any authorities in support of its charge that the Statement of Facts is improperly prepared. What meaning the prosecution attaches to the words "Statement of Facts" cannot be ascertained from their Affidavit and Motion, or their

Brief. Certainly, that meaning, whatever it may be, is not recognized by the Courts and legal authorities.

> "Facts includes the existence or non-existence, in the present or in the past, of persons or tangible things, and condition or location in space, states of mind, relations of things and persons, and the happening of events."
>
> Restatement, Restitution, Sec. 6a.

In the case of *Wrought Iron Bridge Company* v. *Commissioners*, 101 Illinois 518, 520, the Court said:

> "Whatever occurs or exists is properly termed a fact, hence facts are distinguished as being either conditions or states of things and events. They are also distinguished as either physical or physiological. But when considered with reference to the office which they perform in, and the relation they bear to, the trial of a cause in a court of justice, the most important subdivision of facts, so far as the present inquiry is concerned, is that which distinguishes them into 'principal' and 'evidentiary'. The plaintiff in every action either assumes or expressly charges upon the record the existence of certain facts, upon the proof or admission of which his right of recovery depends. These facts thus assumed or directly alleged to exist are the principal facts pertaining to the suit. Sometimes they are established or proved by direct testimony, but they are often—indeed, most generally—established by the proof of other facts, from which their existence is inferred. The latter being mere evidence of the principal facts are properly designated as evidentiary facts and are so known to the law."

In the case of *Woodfill* v. *Patton*, 76 Indiana 575-579, the Court said:

> "Facts are occurrences and events; evidence, the means by which the happening or the character of such events are shown. There are two kinds of facts, evidentiary facts and inferential facts."

The frivolous nature of the Motion of the prosecution here is further demonstrated by the fact that their paper entitled "Points and Authorities in Support of Motion to Suppress Brief of Appellant Glasser" not only fails to support the Motion but has little if any logical connection therewith. That paper begins by misstating the number of the rule of the Court. The paper then quotes the instruc-

tions of the Court in granting leave to appellant to file a Brief of 160 pages against extended copying of evidence in the Brief. The inconsistency of the prosecution appears in the fact that their Motion to suppress appellant's brief is based upon appellant's compliance with this instruction of the Court and upon appellant's compliance with the rules of the Court, in that summary statements of fact and statements of ultimate fact have been used in appellant's brief rather than extended copying of the evidence in instances where there was and can be no controversy by the prosecution of the accuracy of the facts so stated and summarized.

Further proof of the frivolous nature of the Motion of the prosecution is furnished by its citation of the case of *Lawson* v. *United States,* 9 Fed. 2d, 746, which refers to the necessity for giving page references in the brief to the transcript of record. This point of the prosecution clearly is not made in a serious spirit. The appellant's Statement of Facts contains approximately 160 references to the pages of the Bill of Exceptions, and the Argument in the Brief fortifies this by approximately 225 additional page references to the Bill of Exceptions.

The superficial nature of this extraordinary proceeding by the prosecution is demonstrated not only by the insufficiencies in matter of substance above noted but also in the informal errors as well, namely:

> Misstating the number of the rule of the Court above mentioned.
>
> Substitution in the Affidavit of the word "effected" for the word in the Brief "affected".
>
> Substitution of the word "principle" in the Affidavit for the word "principal" in the Brief.
>
> Garbling the fifth objection in the Affidavit in such a manner as to imply erroneous typography and grammar in the Brief.

* * * * *

In view of these conideration, inquiry naturally arises as to the reason for the filing of this extraordinary Motion. It is directed solely against Glasser, against whom there was no direct evidence at the trial of the charge in the indictment. The Statement of Facts in Glasser's brief, we respectfully submit, establishes the strength of Glasser's case and does so by proper method and in accordance with the rules of the court. Can it be that the prosecution, realizing their inability to meet Glasser's

brief, are attempting to defeat his appeal by this indirect and extraordinary means?

In conclusion, we respectfully submit that the Motion of the prosecution and accompanying papers are entirely without merit, are frivolous., and that the Motion should be denied by the Court.

Inasmuch as such motions as this of the prosecution, if encouraged by the Court, will doubtless become numerous, the granting of the Motion would establish a precedent of importance beyond the present case.

In view of the importance of this matter, both to Appellant Glasser and his counsel personally, and to the Court if novel precedent is considered, we respectfully request that, should the Court, after consideration of these papers, deem further attention to the Motion expedient, the matter be set for oral argument by the parties before the full Court.

Respectfully submitted,
John Elliott Byrne,
Attorney for Appellant,
Daniel D. Glasser.

Endorsed: Filed Sept. 11, 1940. Kenneth J. Carrick, Clerk.

And afterwards, to-wit: On the thirteenth day of September, 1940, the following further proceedings were had and entered of record, to-wit:

Friday, September 13, 1940.

Court met pursuant to adjournment.

Before:

Hon. Otto Kerner, Circuit Judge.

The United States of America,
Plaintiff-Appellee,
7315 *vs.*
Daniel D. Glasser,
Defendant-Appellant.

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

It is ordered that the motion of counsel for appellee to suppress the brief of appellant filed August 30, 1940, be, and it is hereby, denied.

And afterwards, to-wit: On the thirteenth day of December, 1940, in causes Nos. 7315, 7316 and 7317, there was filed in the office of the Clerk of this Court, the opinion of the Court, which said opinion is in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

Nos. 7315, 7316, 7317. OCTOBER TERM AND SESSION, 1940.

THE UNITED STATES OF AMERICA, *Plaintiff-Appellee,*
vs.
DANIEL D. GLASSER, NORTON I. KRETSKE, and ALFRED E. ROTH, *Defendants-Appellants.*

Appeals from the District Court of the United States for the Northern District of Illinois, Eastern Division.

December 13, 1940.

Before SPARKS, TREANOR and KERNER, *Circuit Judges.*

KERNER, *Circuit Judge.* This is an appeal from a judgment rendered on a verdict of guilty upon an indictment charging the above named defendants, together with Anthony Horton and Louis Kaplan, with a conspiracy to defraud the United States under Section 37 of the Criminal Code (R. S. Sec. 5440; 18 U. S. C. A. Sec. 88). All of the defendants were found guilty. Glasser, Kretske and Kaplan were each sentenced to imprisonment for a term of 14 months, Horton was placed on probation, and Roth was ordered to pay a fine of $500. Only Glasser, Kretske and Roth separately appealed.

The defendants demurred to the indictment and entered a motion to quash on the grounds: (1) that the grand jury was illegally constituted because women were excluded therefrom; (2) that the indictment was not properly returned in open court; and (3) that it was defective. The demurrers and the motion to quash were overruled.

On oral argument the principal point stressed was that the evidence failed to sustain the verdict of the jury, al-

though other points were raised in the briefs. All of these will be discussed in due course.

The Motion to Quash. It is claimed that the District Court erred in overruling the motion to quash the indictment, because the grand jury that found and presented the indictment was not lawfully constituted, in that the commissioner appointed to select the grand jury selected no women to serve on the grand jury.

The indictment was filed on September 29, 1939. On May 12, 1939, the Legislature of the State of Illinois enacted an Act[1] making women eligible for jury. The constitutionality of that Act was sustained on August 8, 1939, in *People* v. *Traeger*, 372 Ill. 11. The Northern District of Illinois is composed of 18 counties of the State of Illinois. Under the Act in question the county boards of 17 of these counties were privileged to wait until September 1, 1939 before including women on the jury lists. The members of the September 1939 grand jury were summoned for duty on August 25, 1939. It follows that there was no irregularity in not including women on the jury list. Moreover in the affidavits filed in support of the motion to quash, it was not alleged that the appellants have been prejudiced in any way or that anyone of the grand jurors was incompetent or in any way disqualified. Under such circumstances irregularities in the selection of jurymen are to be disregarded. *Wolfson* v. *United States*, 101 F. 430; *Moffatt* v. *United States*, 232 F. 522; and *Petition of Salen*, 231 Wis. 489. The reason for this rule is that the grand jurors do not try the case but merely charge the accused. The manner of their selection is of no consequence to him, he being entitled to claim only fair and impartial grand jurors who possess the necessary qualifications, whereas it is of great consequence that the administration of justice shall not be delayed by mere technical objections. *People* v. *Lieber*, 357 Ill. 423, 436.

Was the Indictment Properly Presented? The point is made that to constitute a valid indictment, it must appear that the indictment was presented in open court and the fact entered of record.

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1. Ill. R. S. 1939, Sec. 1, Chap. 78. "The county board of each county shall at or before the time of its meeting, in September, in each year, or at any time thereafter, when necessary for the purpose of this Act, make a list of sufficient number, not less than one-tenth of the legal voters of each sex of each town or precinct in the county, giving the place of residence of each name on the list, to be known as a jury list."

It is true that a defendant cannot rightfully be put upon trial for a criminal offense prosecuted by an indictment unless the record shows that the indictment was returned into open court by a grand jury. It need not, however, appear by any set form of phraseology that the grand jury appeared in open court and returned the indictment. All that is necessary is that by apt words it must be made to appear from the record that the grand jury appeared in open court and returned into court the indictment to which the defendant is required to plead. The record now before us shows that it contains a *placita* in regular form showing the convening of the court and recites the presence of the Judges of the Court of the Northern District of Illinois, Eastern Division, the United States Marshal and the Clerk of the Court; that on September 29, 1939, at a regular term of the District Court of the United States for the Eastern Division of the Northern District of Illinois, the grand jury returned four indictments in open court. On the face of the indictment in this case in the handwriting of the Clerk of the Court is the statement, "Filed in open court this 29th day of September, A. D. 1939, Hoyt King, Clerk," and preceding this statement is a notation "A true bill," "George A. Hancock, Foreman." We are of the opinion that the record in this case is sufficient, and the contention cannot be sustained.

Is the Indictment Defective? The indictment charged a conspiracy to defraud the United States under Section 37 of the Criminal Code, 18 U. S. C. A. Section 88, which provides that "If two or more persons conspire • • • to defraud the United States in any manner or for any purpose, and one or more of such parties do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be fined not more than $10,000, or imprisoned not more than two years, or both." Now, the appellants make the point that the indictment is defective, because (a) it is duplicitous, (b) it is repugnant and inconsistent, and (c) it is vague and indefinite.

The indictment in substance charged that the defendants and divers other persons to the grand jurors unknown, conspired to defraud the United States of and concerning its governmental function to be honestly, faithfully and dutifully represented in the Courts of the United States by an Assistant United States Attorney, to prosecute certain delinquents for crimes and offenses cognizable under the

authority of the United States as the same should be presented and determined according to law and justice, free from corruption, improper influence, dishonesty or fraud, and more particularly its right to a conscientious, faithful and honest representation of its interest in certain suits and causes brought and pending in the United States in the Northern District of Illinois by promising, offering, causing and procuring to be promised and offered, money and other things of value to an officer of the United States, and to persons acting for and on behalf of the United States in an official function under and by authority of a department and office of the Government of the United States, with intent to influence his decision and action on certain questions and causes which were at times pending, and which were by law brought before such officer in his official capacity, and with the intent to influence to commit and in committing, and to collude in committing certain frauds on the United States, and to induce such officer to do and to omit from doing certain acts in violation of his lawful duty.

The indictment further alleged that Glasser was an Assistant United States Attorney for the Northern District of Illinois, employed to prosecute all delinquents for crimes and offenses cognizable under the authority of the United States, and as such he did act for and on behalf of the United States in certain official functions under and by authority of the Department of Justice of the United States, and as such officer he had certain decisions to make and actions to take on certain questions, causes and proceedings brought before him in the performance of his duties as such Assistant United States Attorney; that it was part of the conspiracy that the defendants would solicit certain persons named in the indictment, charged with violating or about to be charged with violating the laws of the United States, to promise or cause to promise money to be paid or pledged to the defendants to be used to influence and corrupt Glasser in his official capacity in his decisions on certain questions, causes and proceedings, with the intent that the defendants would accept and use said money to corruptly, wrongfully and improperly influence Glasser in his decisions and thus allow a fraud to be committed on the United States in violation of his lawful duties as an assistant United States attorney.

The indictment further alleged that Glasser would meet

and hold conversations with the other defendants and inform them what they should do to carry out the conspiracy and would instruct them as to what steps or action each of them would take in the matters in which he was representing the United States Government and thus Glasser conspired with the other defendants to defraud the United States of and concerning its governmental function to be honestly, faithfully and dutifully represented in the courts of the United States by an assistant United States Attorney.

The Government furnished the appellants with a bill of particulars in which many overt acts were specified, in each of which one or more of the alleged conspirators is alleged to have participated.

It is claimed that the indictment is duplicitous because, it is said, it charges two offenses. With this contention we cannot agree for the reason that in our opinion the indictment charges merely a conspiracy to defraud the United States Government, entered into between an assistant United States Attorney, the defendants Kretske, Roth, Horton, Kaplan and other persons to the grand jurors unknown. Nor is the indictment repugnant and inconsistent on the ground that it alleges that the defendants conspired with each other and with other persons to the grand jurors unknown. *United States* v. *Heitler,* 274 F. 401; *United States* v. *Manton,* 107 F. (2) 834, 839.

Appellants also complain that the indictment is defective because it alleges a case where concerted action is necessary, and that in such a case, conspiracy will not lie, and they cite a line of cases[2] where that principle has been upheld. These cases are not in point for the reason stated in *United States* v. *Manton, supra.* In that case it was charged that the defendants had conspired to defraud the United States of and concerning its right to have the lawful functions of the judicial power of the United States exercised and administered free from corruption, improper influence, dishonesty and fraud. In disposing, adversely to the defendants, of a like contention as is here made, the court said (p. 839): "The indictment does not charge as a substantive offense the giving or receiving of bribes; nor does it charge a conspiracy to give or accept bribes."

2. *Gebardi* v. *United States,* 287 U. S. 112; *United States* v. *Sager,* 49 F. (2) 725; *United States* v. *Hagan,* 27 F. S. 813; *United States* v. *N. Y. C. & H. R. R. Co.,* 146 F. 298; and *United States* v. *Dietrich,* 126 F. 664.

So also in our case the indictment charges a conspiracy to defraud the United States of and concerning its governmental function to be honestly and faithfully represented in the courts of the United States by an assistant United States attorney, to prosecute delinquents for crimes, free from corruption, dishonesty and improper influence. See also *Miller* v. *United States,* 24 F. (2) 353; *Cendagarda* v. *United States,* 64 F. (2) 182; and *Chadwick* v. *United States,* 141 F. 225.

The appellants also contend that the indictment does not advise them of the nature of the charge against them with reasonable particularity as to the persons, time, place and circumstances. Each of the appellants raises this point in his brief, but no one of them argues the point. To us it seems that the indictment sufficiently apprised the appellants of the charge against them.

We come now to the main question in the case: whether there was sufficient evidence to support the verdict. It is argued by Glasser that there is no evidence whatever that he conspired with anyone for any purpose or that he solicited or received any bribes or that he was influenced in his official decisions. Kretske argues that the testimony tending to connect him with the offense charged, was entirely that of accomplices and therefore does not rest upon a substantial evidential basis. And Roth argues that the case rests on conjecture, suspicion and inference, and that the evidence as to him is wholly consistent with his innocence.

In order to consider the error here assigned, it is imperative that we analyze appellee's evidence in the light of the charge made in the indictment. This we have done.

The trial was long, consuming about 26 days, and the record is voluminous, consisting of the testimony of 106 witnesses and a large number of exhibits. Undoubtedly it would be interesting to detail the evidence at length, but that would unduly lengthen this opinion. We think it will suffice if we but enumerate the more important facts and appellants' connection or association with the suits and matters involved in the conspiracy.

From the record it appears that from March 13, 1935 to June 23, 1939 Glasser was an Assistant United States Attorney and that Kretske was an Assistant United

States Attorney from October 1, 1934 to April 15, 1937, both assigned to the handling of Alcohol Tax Law violations. Horton was a professional bondsman and provided sureties for persons required to give bond involving violation of laws brought against such persons by the United States. He met and spoke frequently with Glasser and Kretske in the United States Court House.

One of the matters involved in the conspiracy related to a Chrysler Sedan. It was a libel action in which it was charged that the automobile, seized upon the premises of one Leo Vitale at Peru, Illinois, had been used in connection with a liquor tax violation. The cause came up for hearing before a District Judge on December 23, 1938. Appellee was represented by Glasser, and Roth represented Rose Vitale, wife of Leo Vitale. Roth informed the trial court that the automobile belonged to Mrs. Vitale and had not been used in the manufacture of alcohol. Thereupon an investigator of the Alcohol Tax Unit, who had caused the seizure, informed Glasser that Roth was not informing the court of the true facts nor advising the court that Vitale had heretofore been convicted and sentenced to the penitentiary in the Southern District of Illinois for liquor tax violations, and requested that he be permitted to so advise the trial court. Glasser directed the investigator to leave the court room. The trial court ordered that the automobile be returned to Rose Vitale.

Shortly after December 23, 1938 this investigator informed Glasser that he had a number of witnesses to whom Vitale had said that he (Vitale) had "got out of this for $900" and the investigator suggested that Glasser inquire of Vitale as to who received the $900. Glasser said he would, but he never did.

Elmer Swanson and Patsy Del Rocco, in the latter part of 1936, were engaged in the illicit manufacture of alcohol at 116 W. 119th Street, Chicago, Illinois. The still was seized by the Government. Within a short time after the seizure Swanson met the defendant Horton, who informed Swanson that Swanson and Del Rocco were going to be indicted, but that he (Horton) could take care of it for $500 which would be taken down town and given to the boss. He mentioned "Red" as the boss. It is undisputed that Glasser has red hair and is known as "Red." The $500 was paid to Horton

in currency. Nothing more was heard concerning the seizure of the still after the payment of the $500 nor were Swanson or Del Rocco indicted.

It further appears that on December 31, 1937, Swanson and the Hodorowicz Brothers operated another still at 6949 Stony Island Avenue, Chicago, Illinois, which also was seized by the Government. Swanson was arrested and arranged for a bail bond through Horton. Roth was retained as an attorney to defend, having been recommended by Kretske, whom Swanson had met at Hodorowicz' hardware store.

Frank Hodorowicz operated a hardware store at 11823 South Michigan Avenue and it was there, early in 1938, that Kretske, Horton, Hodorowicz and Swanson met. Horton introduced Kretske. There it was that Kretske said he would take care of the case; for $1200 "it was supposed to be fixed up so nobody goes to jail." $500 in currency was paid to Kretske at his office, the balance to be paid later. At that conversation Kretske said "Don't worry about a thing. Everything will be taken care of." Kretske also said that Glasser was to get part of the money and part was to take care of another lawyer.

The case was placed on Judge Woodward's calendar, Glasser representing the Government and Roth the defendants. On April 28, 1938, on Glasser's motion, the indictment was stricken with leave to reinstate. Swanson paid no money to Roth for his services.

Prior to September 1, 1937 an illegal still was being operated in a garage on 118th Place, Chicago. On September 1, 1937 investigators of the Alcohol Tax Unit raided the garage and arrested Peter Hodorowicz and Clem Dowiat. After the arrest Frank Hodorowicz called upon Kretske and inquired whether Kretske could take care of the case and was told that he (Kretske) "would have to look into it." Kretske told Hodorowicz to return in a few days. On September 23, 1937, Hodorowicz again called upon Kretske and was informed that for $800, to be delivered to Red, the case could be settled. Hodorowicz gave Kretske $800. After the money was given to Kretske, Kretske informed Hodorowicz that "Everything is taken care of for to-morrow morning." The next morning Peter Hodorowicz and Clem Dowiat were discharged by the United States Commissioner.

It further appears that on June 3, 1938, Clem Dowiat and Frank and Peter Hodorowicz were indicted, charged with unlawful possession of distilled spirits. Roth was retained to represent the defendants, and while the case was pending in the District Court Frank Hodorowicz and Kretske had a conversation in which Kretske stated that nothing could be done for Hodorowicz because "There is too much heat." Thereafter Frank Hodorowicz called at Glasser's office and complained that he was getting a raw deal to which complaint Glasser replied: "Bailey says he will get my job if I don't put you away" and "all the money in the world • • • can't do you no good this time."

After this conversation Roth's services were dispensed with and other counsel represented the defendants in that case. They were found guilty and on appeal the judgment was affirmed. *United States* v. *Hodorowicz et al.*, 105 F. (2) 220.

On September 10, 1935, while one Victor Raubunas was conducting a tavern in Chicago, the defendant Kaplan came to the tavern and suggested that Raubunas engage in the illegal manufacture of alcohol, assuring Raubunas that the business would be protected "through the Federal Building" but that it would cost $1000 to secure the protection. Raubunas gave Kaplan $1000 and thereafter Raubunas, Kaplan, Adam Widzes and one Ralph Bogush operated a still at 2524 South Western Avenue. On July 2, 1936 investigators of the Alcohol Tax Unit raided the premises and seized the equipment.

During 1936 Kaplan and Raubunas had other transactions involving the illegal manufacture of untaxpaid spirits and Raubunas made several visits to a garage operated by Kaplan at Kedzie and Ogden Avenues. On one of these visits he saw Kaplan enter an automobile with Kretske and Glasser and drive away with them.

In October or November of 1936 Raubunas, Kaplan, Edward R. Dewes and several other men operated a still, manufacturing alcohol, at Spring Grove, Illinois, until January 1937, when it too was raided by Government officers.

In July, 1937, the Alcohol Tax Unit brought to Glasser's attention the Western Avenue and Spring Grove still violations and requested prosecution. Written reports

containing information implicating Kaplan, Raubunas and others were furnished. Glasser appeared before the grand jury. The grand jury returned a No Bill against Kaplan, Raubunas, Widzes and Bogush in the Western Avenue still.

It further appeared that the Alcohol Tax Unit commenced its investigation of the Spring Grove still on February 10, 1937, a final report being submitted to the District Attorney in July 1937. Between February and July of 1937 several of the investigators held conferences with Glasser regarding the names of possible witnesses and their testimony. Glasser informed one of the investigators that he had heard that Kaplan was a notorious bootlegger and that there was sufficient evidence to obtain his indictment and conviction.

On May 15, 1938, after the defendant Horton had informed Edward R. Dewes that Kretske desired to see Dewes, Horton and Dewes called at Kretske's office. There Kretske advised Dewes that the grand jury was in session, and that if Dewes could raise $100, he (Dewes) would not be indicted for the Spring Grove still. On May 17, 1938, at Kretske's office in the presence of Horton, Dewes gave Kretske $100. The money, Kretske said, would be sent over to the red-head.

It further appears that Glasser presented the evidence relative to the Spring Grove still to the grand jury on May 17, 1938 and told the jurors who should be named in the True Bill. Notwithstanding there was evidence implicating Kaplan, Dewes and Raubunas, a No Bill was returned against them.

On August 25, 1938, one Walter Kwiatkowski was arrested while driving an automobile containing untaxpaid alcohol, taken to Glasser's office and charged with unlawful possession of distilled spirits. He was released from custody upon a bail bond furnished by defendant Horton. Prior to the hearing before the United States Commissioner, Horton informed Kwiatkowski that "he could fix the case for $600." Kwiatkowski withdrew $3750 from his savings account in a Chicago Bank and gave Horton $600. The Commissioner dismissed the complaint. Glasser appeared for the Government.

On November 10, 1938 the Treasury Department re-

quested Glasser to present the Kwiatkowski case to the Grand Jury. Glasser took no action in the matter.

In February, 1938, Investigator Thomas Bailey informed Glasser that one Frank Brown, recently convicted of a liquor violation and confined in the Cook County Jail, desired to impart information relative to others implicated in the violation. Brown was brought to Glasser's office and there stated that one Nick Abosketes was connected with the illegal operation of the still upon the Murdock Farm, in Illinois. Shortly thereafter one William M. Brantman from Chicago, called Nick Abosketes over the telephone at Milwaukee, Wisconsin. The following day Abosketes came to Brantman's office in Chicago. Brantman told Abosketes that he had connections with the Federal Building and could stop things, and that Brown had given certain information to the Federal people connecting him with the Murdock Farm still. On April 19, 1938 Abosketes paid Brantman $3000 in cash, obtaining therefor a receipt in which Brantman stated the money was being paid on account of services. Brantman never rendered any service to Abosketes. Several weeks later Brantman called upon Abosketes at Milwaukee and informed Abosketes that every thing was stopped and under control. The record discloses that the $3000 was delivered to Kretske.

The record further discloses that on September 30, 1938, Alexander Campbell, an assistant United States Attorney for the Northern District of Indiana, while at his office, at ten o'clock in the evening, in the Federal Building at Fort Wayne, Indiana, was visited by appellant Roth, who inquired whether the Wroblewski brothers had been indicted. He was told by Campbell that because of the absence of his filing clerk he was unable to give Roth the information he desired, but that he would have the files examined the next morning and inform Roth. Roth left the office and Campbell continued with his work for about 15 minutes.

After Campbell left his office that evening he met Roth who stated: "Mr. Campbell, if you find, when you check the records that the Wroblewskis are not indicted, and that their case has not been presented to the Federal Grand Jury, isn't there some way that some arrangement can be made so that they will not be indicted? * * * I know all about Grand Juries. I know how they work. * * * Suppose I raise my fee $500 or $1000 and give it to you to handle this case." Upon being told "that is not the way

we operate in the Northern District of Indiana" Roth replied: "Well, that is the way we handle cases in Chicago sometimes."

William and Edward Wroblewski were indicted and convicted on a conspiracy to violate the internal revenue laws of the United States and their conviction was affirmed, *United States* v. *Wroblewski*, 105 F. (2) 444. Roth represented the defendant in that case.

On July 10, 1939, Roth and Kretske called at Campbell's office and Roth inquired, not however in the presence of Kretske, if Campbell knew Investigator Bailey and then said: "Well, Bailey is conducting some sort of investigation in Chicago, he is trying to involve a lot of Chicago people, he is trying to involve certain lawyers in Chicago, • • •. Can't you pull Bailey off? • • • I don't want to get mixed up in this investigation, • • •. It will be a mess, • • •."

The appellants denied all of the incriminating evidence and each adduced testimony that his reputation as a law abiding citizen was good. In addition, Glasser presented the testimony of several of the Judges of the District Court, who testified to specific acts of and conversations with Glasser and representatives of the Alcohol Tax Unit and stated that so far as they could observe he rendered the Government conscientious service.

It is upon this state of the record that we are asked to hold that there was not sufficient evidence to support the verdict.

In considering this contention of the appellants it is well to remember that in passing upon the sufficiency of the evidence, we cannot weigh or determine the credibility of witnesses. We must take that view of the evidence most favorable to the party against whom it is directed and sustain the verdict if there be substantial evidence to support it.

A conspiracy is an offense which is usually established by a great number of apparently disconnected circumstances which, when taken together, throw light on whether the accused have an understanding or are in common agreement. The agreement need not be in any particular form. It is sufficient that the minds of the parties met understandingly. A mutual implied understanding is sufficient so far as the combination or confederacy is concerned. The

agreement is generally a matter of inference, deduced from the acts of the persons accused, which are done in pursuance of an apparent criminal purpose, that is to say, it is not necessary that the participation of the accused be shown by direct evidence. The connection may be inferred from such facts and circumstances in evidence as legitimately tend to sustain that inference.[3] This is so because it is rarely capable of proof by direct evidence.

In our case it was the province of the jury to consider the following noteworthy and expressive circumstances and the reasonable inferences that follow therefrom. (1) The relations existing between Glasser and Kretske while employed as assistant United States District Attorneys and after Kretske's separation from the service. (2) The relations between Kretske and Roth and Roth's employment in liquor violations upon Kretske's recommendation. (3) The relations between Glasser, Kretske, Horton and Kaplan. (4) The knowledge that Horton had concerning the proposed indictment of Swanson and Del Rocco; the payment of $500 to Horton; and the failure to indict Swanson and Del Rocco. (5) The meeting of Kretske at Hodorowicz's store; the recommendation of Roth as attorney to defend; the payment of currency to Kretske; the statement of Kretske "not to worry, everything will be taken care of;" Glasser to receive part of the money; and the striking of the indictment. (6) The payment of $800 by Frank Hodorowicz to Kretske to be delivered to Red; Kretske's statement "Everything is taken care of for tomorrow morning;" and the discharge of the violators the next morning. (7) The indictment of Dowiat, Frank and Peter Hodorowicz; the retaining of Roth to defend; and his discharge after Hodorowicz was told by Glasser that "all the money in the world could do him no good this time." (8) The relations between Raubunas and Kaplan and between Kaplan, Kretske and Glasser. (9) Glasser's conduct and actions relative to Raubunas, Kaplan and Dewes concerning the Western Avenue and Spring Grove stills. (10) Glasser's actions and conduct concerning Brown and Abosketes; and the payment of $3000 by Abosketes to Brantman and by Brantman to Kretske. (11) The conduct and statements of Roth in the Wroblewski case.

3. *Gerard* v. *United States*, 61 F. (2) 872; *United States* v. *Wroblewski*, 105 F. (2) 444; *Goode* v. *United States*, 58 F. (2) 105; *Feigenbutz* v. *United States*, 65 F. (2) 122 and *United States* v. *Manton*, 107 F. (2) 834.

True it is, that if the evidence is as consistent with the innocence of the appellants as with their guilt, no conviction can be had. It is equally true that overt acts of the parties may be considered with other evidence and attending circumstances in determining whether a conspiracy exists. Where the overt acts are of a character that are usually, if not necessarily, done pursuant to a previous scheme and plan, proofs of the acts has a tendency to show such pre-existing conspiracy, so that when proven they may be considered as evidence of the conspiracy charged, and if the established facts and inescapable inferences are inconsistent with the accused's professions of innocence, it becomes the problem of the jury to weigh the evidence and determine, under proper instructions dealing with the *quantum* of proof necessary to convict, the guilt or innocence of the accused.

And so in this case it was proper for the jury to consider all of the evidence and from all the facts and circumstances including those above enumerated to determine what witnesses it believed or did not believe, and to say whether the conspiracy charged in the indictment had been established beyond a reasonable doubt. This the jury has done, rendering a verdict against the appellants. We have considered this record and are compelled to the conclusion that the verdict is supported by substantial evidence.

It is next urged that the trial court erred in overruling Kretske's motion for a continuance and in appointing Glasser's attorney to represent Kretske. The record discloses that the case proceeded to trial on February 5, 1940. On November 2, 1939 attorneys Harrington and McDonnell entered their appearance as attorneys for Kretske. The case was set for trial to commence January 29, 1940. On that day Mr. Harrington appeared before the court and stated that he was engaged in a trial of a case in an Illinois State Court. The court thereupon continued the case to February 5, 1940 and stated that the cause would have to proceed to trial on that date, and that Mr. Harrington's office would have to take care of Kretske's defense or Kretske would have to retain other counsel.

On February 5, 1940, Mr. Harrington not appearing, a motion for a continuance was made and denied and Mr. McDonnell was directed to act for Kretske until Mr. Harrington's arrival. Thereupon Kretske stated that he had just spoken to Mr. Stewart and if the court would appoint

him, he would act as Kretske's attorney. Glasser objected to the appointment of Mr. Stewart. Notwithstanding Glasser's objection Mr. Stewart accepted the appointment and thereafter represented both Kretske and Glasser throughout the trial.

The action of the trial court upon an application for a continuance is purely a matter of discretion, and not subject to review unless it be clearly shown that such discretion has been abused. We cannot say, under the circumstances, the trial court abused that discretion, nor can we say that the appointment of Mr. Stewart and his acceptance of the appointment as attorney for Kretske was such an error as to warrant a reversal.

Appellant Roth next argues that the District Court abused its discretion in denying him a severance. In his petition for a severance Roth alleges that evidence of solicitations and promises would be introduced as well as conversations between the other defendants and various persons with which he had no connection, all of which would prejudice him before the jury. We are unable to hold that in denying a severance there was an abuse of discretion. Moreover, Roth could not successfully demand a separate trial because an unfavorable atmosphere might be created by the presence on the trial of co-defendants. *McDonald* v. *United States*, 89 F. (2) 128.

We come next to the contention that error was committed in admitting Exhibits 81a and 113. These exhibits are reports of the Alcohol Tax Unit. Exhibit 81a pertains to Raubunas, Kaplan and others relative to the Western Avenue still and Exhibit 113 refers to the Spring Grove still.

These reports contained information which the investigators obtained regarding the stills. It is said they were inadmissible because they contained hearsay information, referred to Kaplan as of Jewish descent and made mention that Kaplan and Dewes had been arrested in connection with the killing of one Tony Pinna at Kaplan's garage. (The cross-examination of Dewes by counsel for Glasser and Kretske established the fact that a man had been killed by Dewes in protecting Kaplan from kidnappers.) In addition Glasser makes the point that Exhibit 113 was inadmissible because the Spring Grove still case was presented to the grand jury.

The information concerning the nature of the violations

and the names and history of the alleged violators enabled the assistant United States Attorney in charge of the cases to have completed information concerning the conduct and history of the alleged offenders, and brought to Glasser's attention information for him to either act or not act upon. The information contained in the reports together with Glasser's conduct in these cases threw light upon the question whether the United States was being deprived of the honest and conscientious services of an assistant United States Attorney. We do not think that the mere fact that the racial descent of Kaplan was mentioned in the report was prejudicial. Besides, as the record indicates, the trial court, at the time the Exhibits were received in evidence, instructed the jury that the contents of the reports were not evidence against Roth and Kretske. For these reasons we think the contention is not tenable.

It is also claimed that the trial court sent to the jury Exhibits 92 and 115. Counsel for appellee however say they were not sent to the jury. In the trial of the case some 230 exhibits were offered by the parties. The bill of exceptions discloses that when these exhibits were offered in evidence, objection to their introduction was made and sustained. It also discloses that immediately after the defendants rested their case, the Government offered a large number of exhibits in bulk and mention is made of exhibit 92. There appears to have been no objection to the introduction of these exhibits. It also appears that on May 17, 1940 the trial court entered an order directing the Clerk of the District Court to certify and send to this court all of the exhibits introduced on behalf of the parties. The Clerk of the District Court, in so certifying, does not certify that exhibit 92 was sent to the jury. From the record thus appearing we are unable to say that these exhibits were sent to the jury.

We now consider appellants' contention that the court erred in permitting appellee to introduce evidence concerning Investigator Bailey. It appears that Roth in his direct examination, over Glasser's objection, testified that Glasser had heard that Bailey had been ordered from a court room by a Federal Judge for misconduct in preparation of cases. Upon the cross-examination of Glasser he was asked if it was true that he had told Roth that Bailey had been run out of a Federal court room. No objection

having been made to the question, he answered that he had so stated.

In rebuttal Bailey was permitted to testify that he had never been ordered out of any court room.

It is not permissible, under the guise of testing the credibility of a defendant, to question him on cross-examination about matters not touched upon in the examination in chief nor pertinent thereto, not tending to prove the charge upon which the defendant is being charged, *Gideon* v. *United States*, 52 F. (2) 427. Nevertheless, under the state of the record here appearing it was within the discretion of the trial court to allow this testimony in rebuttal and we cannot say that his conduct in this regard warrants reversal.

Next we are confronted with an argument made by appellant Glasser that the trial court erred in unduly restricting cross-examination of appellee's witness William J. Campbell. It appears that Glasser on direct examination had testified that Mr. Campbell, who was then the United States Attorney for the Northern District of Illinois, had said to Glasser that he would tell the grand jury there was nothing in his (Glasser's) official conduct that would require investigation. Mr. Campbell, when called as a witness in rebuttal, was asked if he had made the following statement, theretofore testified to by Glasser: "Dan, I knew you were going in to the grand jury room this morning and I thought I would go in and put in a good word for you. I wanted to tell that grand jury there was nothing in your official conduct that would require investigation," and Mr. Campbell answered "I did not." Thereupon the trial court ruled that cross-examination of Mr. Campbell would be limited to the subject of his examination in chief. The general rule is that cross-examination should be confined to what was brought out on direct examination, but it is permissible in a proper case, on cross-examination, to ask an interested or hostile witness concerning acts or declarations showing bias and prejudice for the purpose of affecting the credibility of the witness. In such matters large discretion is committed to the trial judge in controlling the cross-examination and great latitude is permissible. We believe the ruling of the court in this case was not reversible error.

The next contention to which we will devote ourselves, is

that the District Court erred in permitting the introduction of evidence concerning overt acts not mentioned in the bill of particulars.

The object of a bill of particulars is to give the defendant notice of the specific charges against him and to inform him of the particular transactions in question, so that he may be prepared to make his defense. Its effect, therefore, is to limit the evidence to the transactions set out in the bill of particulars. The prosecution, however, is not required to specify in the bill all the evidence it will produce in support of the charges, *McDonald* v. *People*, 126 Ill. 150 and *People* v. *Westrup*, 372 Ill. 517, and it is competent, when the issue is whether the accused is guilty of a general conspiracy, to prove distinct overt acts in anyway connected with the conspiracy charged, *McDonald* v. *People, supra*, page 162. In our case appellants assert that the bill of particulars made no reference to the "One Chrysler Sedan" and the Edward and William Wroblewski case in the Northern District of Indiana. Our examination of the bill of particulars convinces us that sufficient appears therein to apprise the appellants that a proffer of evidence would be made concerning Leo Vitale, and we believe that it was competent, under the issues, to prove Roth's conduct in the Edward and William Wroblewski case. Furthermore, in the order directing the appellee to file a bill of particulars, appellee reserved the right to offer additional evidence.

Appellant Kretske also makes the point that "the testimony tending to connect the appellant with the offense charged in the indictment was entirely of accomplices, * * * and that there was no corroboration * * * of the character required by law * * *." With this statement we cannot agree for the reason that there were corroborating witnesses of respectability whose testimony tended to establish the truth of the charge in the indictment. It is true, however, that much of the evidence tending to show Kretske's connection with the conspiracy came from the lips of professional still operators, bootleggers and illegal alcohol dealers, all of whom were either inmates of a Federal penitentiary, indicated for crimes for which they have not yet been prosecuted, or prosecuted and convicted and asking for probation. Nevertheless, as was said in the *Manton* case, *supra*, page 843: "Indeed, in a case like this, it is unlikely that it would be otherwise." However that may be, the rule is that although the testimony of an accomplice should

be subjected to close scrutiny and minute examination and weighed with great care and caution and although it may be attacked before the jury as incredible, unworthy of belief and prompted by unworthy motives; still a conviction may rest upon the uncorroborated testimony of an accomplice.[4] Since the record here does not disclose the trial court's instructions to the jury, we must assume that the trial court directed the jury that the testimony of the accomplices must be minutely examined and weighed with great caution. *Kanner* v. *United States*, 34 F. (2) 863.

It is insisted that it was error to admit the testimony of Alexander Campbell, and the argument is made that his testimony was incompetent as not being a declaration in furtherance of a conspiracy to defraud the United States of the conscientious services of Glasser. To be sure, evidence which has little or no bearing on the charge against an accused is not to be admitted when it shows guilt of an independent crime, but evidence which tends to prove an issue material in a prosecution is not made inadmissible simply because it indicates in some way that a defendant has been accused of another crime. In our case we do not think reversible error was committed by the trial court in ruling on this evidence, for the reason that it is discretionary on the part of a trial judge to allow testimony which tends to throw light upon a particular fact, explain the conduct of a particular person, or to show his purpose, knowledge or design.[5]

Complaint is made and counsel for appellants earnestly argue that numerous prejudicial violations of their rights were committed by the assistant District Attorneys and that by reason thereof they were deprived of a fair and impartial trial.

It is argued: (1) That the prosecutor caused the witness Elmer Swanson to change his testimony from the statement that the case was supposed to be taken care of for $800 to the statement that $500 was paid to Kretske and that there was still a balance of $700 to be paid. (2) That

4. *Arnold* v. *United States*, 94 F. (2) 499, 501; *Wolf* v. *United States*, 283 F. 885; *Delvalley* v. *United States*, 88 F. (2) 579, 581; *Reuben* v. *United States*, 86 F. (2) 464; and *People* v. *Kendall*, 357 Ill. 448.

5. *Butler* v. *United States*, 53 F. (2) 800; *Simpkins* v. *United States*, 78 F. (2) 594; *United States* v. *Pleva*, 66 F. (2) 529; *Farmer* v. *United States*, 223 F. 903; *United States* v. *Sebo*, 101 F. (2) 889; *Devoe* v. *U. S.*, 103 F. (2) 584; *Witters* v. *U. S.*, 106 F. (2) 837.

the witness Dewes was caused to repeat the injurious testimony that Kretske said that he (Kretske) had to resign under pressure and for resigning Kretske was to be able to take care of cases. The record discloses that after the witness had testified as above noted the following occurred:

> Mr. McGreal (Assistant United States Attorney):
>
> Q. Repeat that, what was that? A. He said he resigned.
>
> Mr. Stewart: There is nothing wrong with our hearing. We all heard it, Judge. We heard it in the opening statement, now we hear it here.
>
> The Court: Let us hear it once more. Repeat the answer.
>
> The Witness: A. He said he resigned under pressure over here, and for holding the bag he was to receive favors over here.

(3) That the name of one Steve Schiavone, a bootlegger by reputation, was brought into the case for the purpose of prejudicing the jury. It appears that one of the overt acts mentioned in the bill of particulars related to the case of *United States* v. *William J. Workman* and 32 others. Workman, called as a witness for the appellee, testified that he was the owner of a warehouse in Chicago which he had rented to one Mathews, but that the rent had been paid in cash by one Steve Schiavone, one of the 32 mentioned in the indictment. The witness identified Schiavone from a picture shown to him in open court and offered in evidence as an exhibit. Our examination of the record does not disclose that either of the appellants objected to this testimony.

In support of this contention, counsel cite and place reliance upon *United States* v. *Minuse,* 114 F. (2) 36. In that case the defendants had been indicted for conspiracy to violate the provisions of the Securities Exchange Act of 1934, 15 U. S. C. A. One Frezise, cashier of a bank, called as a witness by the Government, was permitted to testify regarding his defalcations in the bank. The reviewing court was of the opinion that such testimony threw no light upon the issues, and reversed the conviction. It is obvious, under the circumstances in the instant case, that that case is not in point. (4) That a photograph or picture of one Nick Gerardi was improperly admitted in evidence. It appears that in January, 1938, government officials raided and

seized a still at 6309 Eggleston Avenue, Chicago, and arrested Tony Jurkas. Following the arrest Mae Jurkas, wife of Tony Jurkas, visited Glasser at his office and told him that Nick Gerardi was the owner of the still. Mae Jurkas was called as a witness for the appellee and after relating her conversations with Glasser she identified a picture of Nick Gerardi as being the man to whom she had referred. On the back of this photograph appears the following: "Remarks" "Auto thief; counterfeiter; small scar back left hand; round face; married; wife's name Congetta." It further appears that Glasser took no action concerning the alleged illegal operation of the still at 6309 Eggleston Avenue. Now, appellant argues that it was reversible error to introduce and send to the jury this photograph, and *United States* v. *Dressler*, 112 F. (2) 973 is cited. We are of the opinion that the *Dressler* case is not in point, for the reason that the admission of the cards carrying the criminal history therein was that of the defendant while in our case it concerns a third party. Moreover, it does not appear that any objection was made to the introduction of the photograph.

We have not discussed all of the complaints mentioned in the briefs under this contention. However we have examined and considered all of them and conclude that neither those specifically above noted nor the others not discussed, warrant a reversal.

Considerable criticism is heaped upon the court in the conduct of the trial. The claim is made: (1) That the trial judge committed acts of advocacy advantageous to the appellee and injurious to appellants; (2) That he cross-examined Glasser in a hostile manner; (3) That he restricted cross-examination of appellee witnesses; and (4) That he made remarks favorable to appellee and prejudicial to appellants.

It is of course the duty of the trial judge to conduct the trial in an orderly way with a view to eliciting the truth and to attaining justice between the parties, and in so doing he has the authority to interrogate witnesses, *Kettenback* v. *United States*, 202 F. 377, 385. We agree with Judge Sanborn that:

> "It is not always possible during the trial of a hotly contested case for a judge, however impartial he may be, to maintain in the courtroom that atmosphere of complete judicial calm which is so much to be desired.

> We will not overlook the fact that the human element cannot be entirely eliminated in the trial of a law suit. While a counsel owes to the court, because of the position which he occupies, the utmost deference and respect, and while the court owes to them an equal obligation of courtesy and patience and consideration, nevertheless, sharp differences of opinion do arise in the heat of trial and things are said which are better left unsaid. Such incidents are often regarded as trivial in the trial of a case and are quickly lost sight of, but when set forth in the record and emphasized by counsel on appeal, they take on an importance which they never actually possessed. * * * An appellate court should be slow to reverse a case for the alleged misconduct of the trial court, unless it appears the conduct complained of was intended or calculated to disparage the defendant in the eyes of the jury and to prevent the jury from exercising an impartial judgment on the merits." *Goldstein* v. *United States*, 63 F. (2) 609.

Whatever our personal desires might be, we are compelled to say that space does not permit us—nor would it serve any good purpose—to discuss in detail the instances claimed to be prejudicial. Suffice it to say without further elaboration that we have examined every criticism made, considered them in connection with the entire record, and are satisfied that the complaints are of minor importance. They did not affect the substantial rights of the appellants, nor prevent the jury from exercising an impartial judgment on the merits.

Finally, it is argued that the court erred in overruling the motion for a new trial. In their briefs appellants concede that the disposition of such a motion rests within the sound discretion of the trial judge, and that his ruling in granting or overruling a motion for a new trial is not subject to review by this court except for clear abuse of discretion. But they insist that the record discloses the District Court did abuse that discretion and they base their argument upon the fact that Glasser and Roth filed affidavits, alleging in substance that all the female names placed in the box from which jurors are selected were presented to the clerk of the court from a list made up by the Illinois Women Voters league to the exclusion of all other females; that the females selected by said league had attended jury classes maintained for the purpose of giving instructions to po-

tential jurors; that lectures before the jury classes presented the views of the prosecution; and that females otherwise qualified and eligible for jury service were deliberately excluded from the box. It was also alleged that the affiants acquired knowledge of these facts after the verdict. Roth filed a second affidavit in which he alleged that one of the jurors was ill during the deliberations and about midnight requested that he be allowed to retire and that his request was denied.

In the instant case the trial court in passing upon the motion for a new trial did consider the affidavits filed and was convinced that the appellants were in no wise prejudiced by the incidents complained of. Under such circumstances we cannot say that the District Court had abused the discretion vested in it by law. *Smith* v. *United States*, 231 F. 25 and *N G Sing* v. *United States*, 8 F. (2) 919.

We have now considered all of the assignments of error, and we are convinced that no error has intervened justifying a reversal. The judgments of the District Court will therefore be affirmed.

Endorsed: Filed Dec. 13, 1940. Kenneth J. Carrick, Clerk.

And on the same day, to-wit: On the thirteenth day of December, 1940, the following further proceedings were had and entered of record, to-wit:

Friday, December 13, 1940.

Court met pursuant to adjournment.

Before:

Hon. William M. Sparks, Circuit Judge.
Hon. Walter E. Treanor, Circuit Judge.
Hon. Otto Kerner, Circuit Judge.

7315 The United States of America, *Plaintiff-Appellee*, *vs.* Daniel D. Glasser, *Defendant-Appellant*. } Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration, whereof, it is ordered and adjudged by this Court that the judgment of the said District Court in this cause appealed from be, and the same is hereby, affirmed.

7316	The United States of America, *Plaintiff-Appellee,* *vs.* Norton I. Kretske, *Defendant-Appellant.*	Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration, whereof, it is ordered and adjudged by this Court that the judgment of the said District Court in this cause appealed from be, and the same is hereby, affirmed.

7317	The United States of America, *Plaintiff-Appellee,* *vs.* Alfred E. Roth, *Defendant-Appellant.*	Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration, whereof, it is ordered and adjudged by this Court that the judgment of the said District Court in this cause appealed from be, and the same is hereby, affirmed.

And afterwards, to-wit: On the twenty-fourth day of December, 1940, in cause No. 7315, there was filed in the office of the Clerk of this Court, a petition for a rehearing, which said petition for a rehearing is in the words and figures following, to-wit:

IN THE

United States Circuit Court of Appeals

FOR THE SEVENTH CIRCUIT.

No. 7315

THE UNITED STATES OF AMERICA,
Plaintiff-Appellee,
vs.
DANIEL D. GLASSER,
Defendant-Appellant.

PETITION FOR REHEARING.

JOHN ELLIOTT BYRNE.
Attorney for Petitioner.

DANIEL D. GLASSER,
Petitioner, Pro se.

THE BURTHORP-DARBEE PRINTING COMPANY, 310 W[illegible]

IN THE

United States Circuit Court of Appeals

FOR THE SEVENTH CIRCUIT.

No. 7315

THE UNITED STATES OF AMERICA,
Plaintiff-Appellee,

vs.

DANIEL D. GLASSER,
Defendant-Appellant.

PETITION FOR REHEARING.

We regret the necessity of presenting to this court so lengthy a petition for rehearing, but feel that this course is necessary in justice to Appellant Glasser. The general situation here seems to us to be quite similar to that in the case of *U. S.* v. *Haim*, 114 Fed. 2nd, 566, 2d Circuit. In that case a conviction of Haim for conspiracy had been affirmed in the Appellate Court's original decision, but on petition for rehearing the judgments of conviction were reversed because in petition for rehearing certain significant evidence was shown to have been misapprehended by the Court of Appeals.

Your petitioner, Daniel D. Glasser, presents this, his petition, for rehearing of said cause and respectfully submits to the court that, after a most careful study of the opinion of the court, Appellant Glasser is impelled to the conclusion that certain important and material matters in the record respecting the proceedings before trial have been overlooked by the court, and that certain important and material facts at the trial have been overlooked and

misapprehended in the opinion, and that the application of the law to the case in certain important respects has not been correctly made in the opinion, and that vital and material propositions necessary to a correct decision were not considered in the opinion.

This appellant, Glasser will not burden the court with arguments with respect to all of our contentions but, without waiving our position with respect to those propositions not covered herein, we ask leave to discuss in this petition some of the matters with respect to which we believe brief discussion will persuade the court to grant a rehearing. Petitioner, therefore, respectfully petitions for a hearing of said cause, and in support of said petition respectfully shows the following:

The ..ecord Fails to Show the Jurisdictional Requirement That the Indictment Was Returned in Open Court.

The opinion of this court (page 3) states that the record of the clerk of the District Court shows that the Grand Jury returned four indictments in open court. The opinion overlooks the fact that this entry carries the additional words "added 10-30-39." (Tr. 39.) Evidently, therefore, the notation of the return of the indictments in open court was made by some unidentified person who did not set forth on the record what authority, if any, he had for making this notation which, it is clear, was made some 30 or 31 days after the actual filing of the indictment and after the Grand Jury had been finally discharged.

It is apparent from the above facts that the indictment was filed in court on September 29, 1939, but that no record was made on the court's records purporting to show a valid return of the indictment in open court until about 30 days thereafter. This manifestly does not furnish the jurisdictional evidence as to return of the indictment in open court which the law requires under the authorities universally recognized.

THE EVIDENCE.

The opinion of the court here indicates a careful effort by the court to analyze the evidence of the Government. This portion of the opinion furnished Appellant Glasser for the first time in the entire history of the case with a concise and clear-cut statement as to matters which it is thought indicate his guilt Appellant Glasser appreciates this review of the evidence by the court and accepts that review as containing a description of such matters as the court deems to weigh against Glasser. However, whether because of lack of clarity in the briefs of the Government or Appellant Glasser or both, the opinion does not in all respects correctly state all the pertinent evidence in the review therein contained. We, therefore, ask leave to set forth a correct description of the evidence as to the matters mentioned in the court's opinion, feeling assured that by so doing we can persuade the court of the justice of Appellant Glasser's contention that there is no evidence of his guilt. In this discussion we shall limit ourselves, as the court has done, to the evidence of the Government, with, however, occasional reference to such portions of Appellant Glasser's evidence as was not disputed at the trial.

The Chrysler Sedan Libel Case.

The opinion states:

> "One of the matters involved in the conspiracy related to a Chrysler Sedan. It was a libel action in which it was charged that the automobile, seized upon the premises of one Leo Vitale at Peru, Illinois, had been in use in connection with a liquor tax violation. The cause came up for hearing before a District Judge on December 23, 1938. Appellee was represented by Glasser, and Roth represented Rose Vitale, wife of Leo Vitale. Roth informed the trial court that the automobile belonged to Mrs. Vitale and had not been

used in the manufacture of alcohol. Thereupon an investigator of the Alcohol Tax Unit, who had caused the seizure, informed Glasser that Roth was not informing the court of the true facts nor advising the court that Vitale had theretofore been convicted and sentenced to the penitentiary in the Southern District of Illinois for liquor tax violations, and requested that he be permitted to so advise the trial court. Glasser directed the investigator to leave the courtroom. The trial court ordered that the automobile be returned to Rose Vitale."

The court's statement that the investigator "informed Glasser that Roth had not informed the court of the true facts nor advising the court that Vitale had theretofore been convicted and sentenced to the penitentiary in the Southern District of Illinois for liquor tax violations and requested that he be permitted to so advise the trial court implies: 1. That Dowd's alleged statement to Glasser was correct. 2. That Dowd had competent testimony which would supply the alleged deficiencies in the presentation of the case.

The first implication mentioned is not a logical one inasmuch as the facts relied upon the Alcohol Tax Unit for forfeiture of the automobile were that the car was seized in a private garage immediately behind a residence building in which an illicit distillery had been located and that there were marks in the rear compartment of the automobile indicating where heavy cans, (supposedly containing alcohol), had been placed in the past. It is not disputed that these facts were placed before Judge Barnes by Mr. Glasser by reading of the Alcohol Tax Unit statement to that effect. Evidently, Mr. Glasser also informed Judge Barnes of the identity of Leo Vitale, inasmuch as Judge Barnes said (Tr. 717) "I remember that case, the claimant was the wife of a bootlegger."

The second implication in the court's opinion, namely, that Dowd could have testified to matters justifying the

forfeiture of the automobile, in addition to those set forth in the Alcohol Tax Unit statement, is not supported by the record. The statements on page 219 of the record by Dowd to the effect "This car was used to haul the sugar from a warehouse to the building where the distillery was. It was also used for hauling his associates, bootleggers, around different parts of the country. It was also used in trailing carloads of alcohol from La Salle County down to Springfield, Ill.," were entirely conclusions and suspicions of Dowd as to which he was not a competent witness. Dowd never claimed or reported that he could testify competently to such matters. Unfortunately, Glasser's counsel at the trial did not object to this statement of hearsay and conclusions by Dowd, but we believe that this court in justice to Glasser will not insist upon objection in this instance where the matter is so vital to appellant.

It, therefore, clearly appears, we respectfully submit, that the trial of the Chrysler Sedan Case was properly conducted by Glasser that he placed before the court, Judge Barnes, all pertinent and proper evidence given him by the Alcohol Tax Unit. As a matter of fact, the record indicates that Glasser got before Judge Barnes some information not strictly competent, namely, that Leo Vitale was a bootlegger. Certainly we submit, it would have been improper and a violation of the laws of evidence for Glasser to have attempted to introduce evidence of other disconnected violations of law or convictions of Vitale in presenting this Automobile Libel Case.

We, therefore, respectfully submit that the matter of the trial of the Chrysler Sedan case furnishes no evidence inconsistent with Glasser's innocence.

Statement of Investigator Dowd That Vitale Said He "Got Out of This for $900."

The statement in the opinion that "the investigator suggested that Glasser inquired of Vitale as to who received the $900. Glasser said he would, but he never did," seems to give Dowd's testimony a meaning which it did not have. Dowd's testimony, (R. 221) "I said, 'let us bring him in and see who got those $900.' He said he would." To this appellant this means that Dowd requested permission from Glasser to bring Leo Vitale before Glasser and that Glasser gave Dowd the desired permission. By "us" Dowd evidently meant himself and other investigators in the Alcohol Tax Unit. By the words "He said he would," evidently is meant that Glasser said he would let the Alcohol Tax Unit bring Vitale in and see who got those $900. It should be remembered that Dowd was the investigator charged with the duty of obtaining evidence, while Glasser was not an investigator nor charged with such duty, but the duty of presenting in court such competent evidence as was obtained by Dowd and other investigators of the Alcohol Tax Unit.

Moreover, consideration of this alleged incident shows its superficial nature and absence of proof against Glasser. If any money was paid by Vitale to any of the defendants in the case, certainly the extensive investigation conducted by the Government in this case would have resulted in the production by the Government of either Leo Vitale or some other witness to testify to some fact in this regard. It is clear that Dowd himself placed no credence in the rumor for Dowd never again called the matter to Glasser's attention, nor did he make a written report of it, so far as the record discloses, to any official or department of the Government. In his testimony at Glasser's trial, Dowd gave the name of no person who could substantiate the alleged story, neither were any such persons called to testify in

the case at bar. It, therefore, clearly appears, we respectfully submit, that there cannot be even a suspicion that Glasser received any of the alleged $900 and that the alleged incident is entirely without bearing upon his guilt or innocence.

Elmer Swanson and Patsy Del Rocco Matter.

The opinion says:

> Elmer Swanson and Patsy Del Rocco, in the latter part of 1936, were engaged in the illicit manufacture of alcohol at 116 W. 119th Street, Chicago, Illinois. The still was seized by the Government. Within a short time after the seizure Swanson met the defendant, Horton, who informed Swanson that Swanson and Del Rocco were going to be indicted, but that he (Horton) could take care of it for $500, which would be taken down town and be given to the boss. He mentioned "Red" as the boss. It is undisputed that Glasser had red hair and is known as "Red." The $500 was paid to Horton in currency. Nothing more was heard concerning the seizure of the still after the payment of the $500, nor were Swanson and Del Rocco indicted.

The opinion of the court here seems to assume that Glasser conveyed to Horton Glasser's supposed knowledge of the implication of Swanson and Del Rocco with the still. This assumption is not supported by the record. There was no testimony by any investigator or anyone else that he informed Glasser at the time that Swanson and Del Rocco were involved in the operation of this still. Neither was there any report by the investigators of such complicity of these parties. It must, therefore, be concluded that if Horton told Swanson and Del Rocco that he knew of their implication in this still, his information was received from some one other than Glasser, as it is clear that at the time of the conversation in question Glasser had no knowledge of their connection with this still.

It is important to note that this still was not discovered

by investigation but as the result of a fire. No arrests were made at the time. Swanson correctly testified that a prosecutor has no knowledge of an offense until it is presented to him by the investigator. (Tr. 240).

We respectfully submit that this transaction furnishes no evidence of any lack of conscientious performance of duty by Glasser, much less any evidence tending to indicate guilt.

The Still at 6949 Stony Island Avenue, Chicago.

The opinion says:

> It further appears that on December 31, 1937, Swanson and the Hodorowicz Brothers operated another still at 6949 Stony Island Avenue, Chicago, Illinois, which also was seized by the Government. Swanson was arrested and arranged for a bailbond through Horton. Roth was retained as an attorney to defend, having been recommended by Kretske, whom Swanson had met at Hodorowicz' hardware store.
>
> Frank Hodorowica operated a hardware store at 11823 South Michigan Avenue and it was there, early in 1938, that Kretske, Horton, Hodorowicz and Swanson met. Horton introduced Kretske. There it was that Kretske said he would take care of the case for $1,200. "It was supposed to be fixed up so nobody goes to jail." $500 in currency was paid to Kretske at his office, the balance to be paid later. At that conversation Kretske said: "Don't worry about a thing. Everything will be taken care of." Kretske also said that Glasser was to get part of the money and part was to take care of another lawyer.
>
> The case was placed on Judge Woodward's calendar. Glasser representing the Government and Roth the defendant. On April 28, 1938, on Glasser's motion, the indictment was stricken with leave to reinstate. Swanson paid no money to Roth for his services.

The testimony of the bootleggers in relation to the above case was given by Frank Hodorowicz (Tr. 298), Anthony Hodorowicz (Tr. 344), Clem Dowiat (Tr. 273-274), Elmer Swanson (Tr. 227, 228-229, and 230), and Christ Del Rocco (Tr. 244-245).

A thorough study of the testimony of each of the above witnesses with respect to this case, we contend, will demonstrate the extreme effort of the prosecution to lead the witnesses into testimony implicating Glasser.

Frank Hodorowicz, Anthony Hodorowicz, and Clem Dowiat did not mention Glasser's name in this connection. Indeed, Frank Hodorowicz testified that Kretske did not tell him to whom he intended giving the money.

At (Tr. 230) Swanson, under the leading and suggestive questions of Mr. Ward, testified:

> Mr. Ward: Q. Would it refresh your recollection if I was to tell you that Kreske said "Don't worry about a thing. Everything will be taken care of?"
> A. Yes, that was said.
> Q. And Dan was to get part of the money that was given him?
> A. Well, I don't know if he said Dan or Red, or something like that, either one.
> Q. Either what?
> A. Either one, Red or Dan.
> Q. Didn't you know at that time who Kretske was referring to as Red?
> A. Yes.
> Q. Who?
> A. Well, it was Glasser.

Del Rocco testified (Tr. 244-245) under leading interrogation, as follows:

> Q. Was anything said about what Kretske was going to do with the money?
> A. Yes, he would get the money and take care of another lawyer. He was going to represent Elmer and Tony Hodorowicz.
> Q. Was anything said about what he was going to do with the money other than that?
> A. Split it up.
> Q. With whom?
> A. Well, he had to take care of somebody, that was none of our business, that was his.
> Q. When Mr. Kretske told you the heat was on, did he say the heat was on the red-head? and he guessed it was hard for it to be carried out?

Mr. Stewart: I object, Your Honor, that is unfair
The Court: It is leading. Objection sustained.
Mr. Ward: Q. Do you recall anything else that was said?
A. The heat was on the red-head.
Q. Are you sure he said that?
The Witness: At that time I didn't know Mr. Glasser.
Q. Did you know who he meant?
A. (Answer inaudible).

The narration of the facts in the opinion of the court seems to indicate that the Appellate Court felt that the striking of the case with leave to reinstate was caused by the payment of money to Mr. Glasser. Such was not the fact as established by uncontradicted evidence. The case was stricken at the request of Investigator in Charge Ritter, who evidently exercised close personal supervision over it. This testimony was given by Glasser and inasmuch as it was not denied by Mr. Ritter, who did not take the stand as a witness, we respectfully submit that Glasser's testimony on this point must be considered conclusive. Glasser's testimony (Tr. 918-921) as follows:

Q. Now there has a case been mentioned here concerning Swanson which involved a Stony Island still. You will remember it, when I refer to it as a case where Mr. Roth had a diagram and they were preparing for a trial and Swanson was a defendant and one of the Hodorowiczs and Clem Dowiat, do you remember that case?

A. Well, I never saw the diagram before we take it to court here, but I remember the case pretty well.

Well, that case I O. K.'d the complaint before the Commissioner. I don't remember Bailey being in the Commissioner's office, although I suppose he was because he says he was. But I do remember Mr. Ritter. Mr. Ritter was the man with whom I had most of my contacts. Mr. Ritter is the investigator in charge of the agents of the Alcohol Tax Unit and he was there in the Commissioner's courtroom on the day set for the hearing of the case you are asking me about. And he came to me and he said, "I don't think we have got enough evidence here to win this case," and I said,

"Well I don't want to lose this case. This is one of those Hodorowicz cases, I don't want to lose this case," I said, and "I don't know what I am going to do." He said, "Why don't you go in and ask the Commissioner to continue the case and in the meantime I am sure we can get more evidence." So I said, "All right." He said: "We can present it to the Grand Jury if we don't get any more," and I said: "No, I don't think I would like to do that, if we haven't got the evidence, I don't want to proceed." He said: "Well, get the continuance." So I went in before the Commissioner and I asked for the continuance.

• • • • •

After the continuance was granted, another date was set. Before that date arrived, Mr. Ritter came over to see me and we discussed the case and we decided, Ritter and I, that the matter ought to be presented to the Grand Jury, and we did present it to the Grand Jury. The Grand Jury voted a true bill.

• • • • •

He said: "Now when we get this indictment, if we have not got sufficient evidence to convict these people we can continue it generally because we can get it." He said: "I am sure we can get it." And I said: "All right." We presented it to the Grand Jury and the Grand Jury indicted them and we went before the Commissioner and dismissed our case, the case was pending before the District Court and we came in before the Judge to whom it was assigned, and I think Roth was there. I don't remember, but anyway, on the plea in arrignment day it was put over. I don't remember what order was entered on that date, but I put it over and subsequently I had another conversation with Ritter and I said: "Now this day for trial is rapidly approaching and I don't see this conclusive evidence that you talked about so much." He said: "Well, why don't you strike it off." So I struck it off.

• • • • •

I did not, before I struck that case off, communicate my intentions to Mr. Roth, or anybody outside of my office. I probably should have, but I didn't, and I had a conversation with Mr. Ritter about that because the date the jury was being picked in this courtroom I said: "Ritter, you know what I did in that Swanson

case." I said: "I did it at your request," and I said "Now Ward is presenting evidence as though I was crooked about it. I would like to have you be my witness." He said: "I understand the Government is going to call me and I will testify to it." And he has been in Chicago ever since and he has not testified.

Mr. Ward: Just a minute Mr. Glasser, I am not objecting to anything—

The Court: Did you subpoena him?

The Witness: No, I have not.

The Court: He is subject to subpoena in this case if you want him here, you can have him here.

The Witness: He is a Government witness.

Mr. Stewart: Can't we argue our case when the time comes?

Mr. Ward: Just a minute, I am making no objection and I want to be heard and the last statement I move be stricken, the last few lines of it, something about the agent.

The Court: What was it?

(Answer read by the reporter, as above recorded.)

Mr. Ward: Yes, "He has been in Chicago ever since and he has not testified." It is not responsive and I move to strike it.

The Court: That may be stricken. I will say now to the defendant he is subject to subpoena.

The Witness: I am sorry, Judge.

The Court: You have a right to bring him into this court if you wish.

Corroboration of Glasser's testimony that the case was stricken with leave to reinstate at Mr. Ritter's request, because of the weakness of the evidence, is furnished by the fact that the record discloses the case as never having been reinstated.

In view of the foregoing, we respectfully submit that there is nothing in this transaction furnishing the slightest indication of lack of conscientious service on Glasser's part, much less any suggestion of guilt of the charges in the indictment.

Still in Garage at 118th Place, Chicago.

The opinion says:

> Prior to September 1, 1937 an illegal still was being operated in a garage on the 118th Place, Chicago. On September 1, 1937, investigators of the Alcohol Tax Unit raided the garage and arrested Peter Hodorowicz and Clem Dowiat. After the arrest Frank Hodorowicz called upon Kretske and inquired whether Kretske could take care of the case and was told that he (Kretske) "would have to look into it." Kretske told Hodorowicz to return in a few days. On September 23, 1937, Hodorowicz again called upon Kretske and was informed that for $800 to be delivered to "Red", the case could be settled. Hodorowicz gave Kretske $800. After the money was given to Kretske, Kretske informed Hodorowicz that "Everything is taken care of for tomorrow morning." The next morning Peter Hodorowicz and Clem Dowiat were discharged by the United States Commissioner.

This case was incapable of successful prosecution from the beginning because the search warrant was served upon the wrong address. This was admitted by Investigator Rossner (Tr. 277-279). The petition to suppress had been filed about a week before the hearing. This was done by Attorney Balaban, who had no connection with Kretske (Tr. 728). If Kretske had examined the Commissioner's file, a public record, or had been present at the hearing, Kretske would have known that the case would of necessity be dismissed by the Commissioner the following morning, at which time the Commissioner had stated he would announce his decision. There was nothing that Glasser could have done to prevent this result. Moreover, there was no reason why Kretske should have divided the alleged $800 with Glasser, because Kretske knew that Glasser could not have prevented the dismissal of the case. Furthermore, Investigator Rossner testified that at the hearing before the Commissioner he gave all the evidence he had in support of the case and did not withhold anything. In fair-

ness to Kretske it should be stated that he denied the receipt of this $800 and any and all conversation with Frank Hodorowicz or anyone else agreeing to fix cases.

This transaction shows no indication of lack of conscientious duty by Glasser, much less any evidence of criminal misconduct.

The Frank Hodorowicz Conversation With Glasser About the Case Against the Former, Clem Dowiat and Peter Hodorowicz.

The opinion says:

> It further appears that on June 3, 1938, Clem Dowiat and Frank and Peter Hodorowicz were indicted, charged with unlawful possession of distilled spirits. Roth was retained to represent the defendants, and while the case was pending in the District Court Frank Hodorowicz and Kretske had a conversation in which Kretske stated that nothing could be done for Hodorowicz because "There is too much heat." Thereafter Frank Hodorowicz called at Glasser's office and complained that he was getting a raw deal, to which complaint Glasser replied: "Bailey says he will get my job if I don't put you away," and "all the money in the world," * * * "can't do you no good this time."

In view of the record, the extracts from the conversation above quoted should not be considered as admissions by Glasser as the court seems to consider them. Part at least of the statements were made in the hearing of Bailey and several others in a loud tone of voice (Tr. 710), and certainly Glasser would not have made any statements in that situation which partook of an incriminating nature. This conversation also was in the public corridor of the courthouse. Hodorowicz and Glasser also had a conversation in the presence of Investigator Burns, in which Glasser told Hodorowicz that the latter, *this time*, was going to the penitentiary for a long time (Tr. 928). This was not denied by Mr. Burns and, therefore, must be taken as con-

clusive. The remark about money was caused by Hodorowicz' statement that he would spend $10,000 to get out of this trouble, to which Glasser replied, in substance, that if he spent $10,000,000 it would not do any good. Hodorowicz did not deny the truth of this testimony of Glasser's, so that of three possible witnesses, all under the control of the Government, no one disputed the truth of Glasser's testimony.

It therefore, clearly appears, we submit, that the conversations in question were not admissions or intimations by Glasser of any wrong-doing but, on the contrary, were statements by him to a defendant, Hodorowicz, to show that defendant the futility of attempting a useless defense and the folly of suggesting a readiness to pay large sums of money to escape the consequences of his (Hodorowicz') misdeeds.

Moreover, Hodorowicz' statement that he complained about a "raw deal" cast no suspicion upon Glasser, as Hodorowicz undoubtedly meant this as another version of his complaint at the Glasser trial that he (Hodorowicz) was innocent of the liquor charge and that the agents had lied about him (Tr. 340). Hodorowicz also complained to Investigator Bailey about the equivalent of a raw deal. On the occasions when Bailey told Hodorowicz before his case came up that "He (Bailey) got him," Hodorowicz said: "It was dishonest"—"I told him he ain't fair and all like that," "And he just smiled and says: 'That's the way we present the case,' or something like that" (Tr. 338).

It, therefore, appears, we respectfully submit, that these conversations with Hodorowicz were part of the performance of the routine duty of Glasser in dealing with defendants and in endeavoring to save the Government time, trouble, and expense by endeavoring to induce a guilty defendant to plead guilty without trial. This conduct was fair to both Hodorowicz and the Government, as Glasser

convicted Hodorowicz after trial in that case, being the first time after many years of bootlegging operation that Hodorowicz had been convicted.

There is nothing in this incident, we respectfully submit, indicating any lack of conscientious performance of duty by Glasser, much less any criminal misconduct.

The Western Avenue Still Case.

The opinion says:

> On September 19, 1936, while one Victor Raubunas was conducting a tavern in Chicago, the defendant Kaplan came to the tavern and suggested that Raubunas engage in the illegal manufacture of alcohol, assuring Raubunas that the business would be protected "through the Federal Building," but that it would cost $1000 to secure the protection. Raubunas gave Kaplan $1000 and thereafter Raubunas, Kaplan, Adam Widses and one Ralp Bogush operated a still at 2524 South Western Avenue. On July 2, 1936, investigators of the Alcohol Tax Unit raided the premises and seized the equipment.
>
> During 1936 Kaplan and Raubunas had other transactions involving the illegal manufacture of untaxpaid spirits and Raubunas made several visits to a garage operated by Kaplan at Kedzie and Ogden Avenues. On one of these visits he saw Kaplan enter an automobile with Kretske and Glasser and drive away with them.

The opinion seems to misapprehend the testimony of Raubunas. He did not testify that he paid $1000 for protection, but that he paid $1000 to become a partner in the still, which Kaplan told him was to be protected through the Federal Building.

The alleged meeting of Kaplan with Kretske and Glasser in an automobile mentioned by Raubunas is something which, we respectfully submit, should have no weight with the court. It is a matter incapable, in its nature, of successful contradiction by the defendants and subject to the well-known rule of evidence that testimony in its nature

incapable of contradiction is of little or no weight. The various discrepancies in Raubunas' testimony on this point, making it entirely incredible, have been set forth on pages 72-73 of our original brief.

The opinion mentions that a no bill was returned in this case. The reason for this is furnished by the last paragraph of Exhibit 81, which is the investigator's report. This report states that the witnesses were reluctant and unwilling to testify and had given contradictory statements. The report suggests that Glasser should call them to his office for the purpose of trying to get proper testimony from them. Evidence of the Government (Tr. 528) proved that Glasser took before the Grand Jury the witnesses furnished by the investigator, who were reluctant, and that as a result thereof a no bill was voted. The conduct of the Western Avenue Still Case does not furnish any indication of any wrongful act or omission on the part of Glasser.

Spring Grove Still Case.

The opinion says:

> In October or November of 1936, Raubunas, Kaplan, Edward R. Dewes, and several other men operated a still, manufacturing alcohol, at Spring Grove, Illinois, until January, 1937, when it too was raided by Government officers.
>
> In July, 1937, the Alcohol Tax Unit brought to Glasser's attention the Western Avenue and Spring Grove still violations and requested prosecution. Written reports containing information implicating Kaplan and others were furnished. Glasser appeared before the Grand Jury. The Grand Jury returned a no bill against Kaplan, Raubunas, Widzes, and Bogush in the Western Avenue Still.
>
> It further appeared that the Alcohol Tax Unit commenced its investigation of the Spring Grove still on February 10, 1937, a final report being submitted to the District Attorney in July, 1937. Between February and July of 1937, several of the investigators held conferences with Glasser regarding the names of possible

witnesses and their testimony. Glasser informed one of the investigators that he had heard that Kaplan was a notorious bootlegger and that there was sufficient evidence to obtain his indictment and conviction.

On May 15, 1938, after the defendant Horton had informed Edward R. Dewes that Kretske desired to see Dewes, Horton and Dewes called at Kretske's office. There Kretske advised Dewes that the grand jury was in session, and that if Dewes could raise $100, he (Dewes) would not be indicted for the Spring Grove still. On May 17, 1938, at Kretske's office in the presence of Horton, Dewes gave Kretske $100. The money, Kretske said, would be sent over to the red-head.

It further appears that Glasser presented the evidence relative to the Spring Grove Still to the grand jury on May 17, 1938, and told the jurors who should be named in the true bill. Notwithstanding there was evidence implicating Kaplan, Dewes, and Raubunas, a no bill was returned against them.

The evidence of the Government showed by Exhibit 96, which was a transcript of part of the evidence which Glasser produced before the Grand Jury, that Glasser presented there all the witnesses available to him and gave to the Grand Jury the names of all prospective defendants, including Kaplan, Raubunas, and Dewes (Tr. 529). These names were given in the order of their importance, with Kaplan first on the list. It clearly appears that all the witnesses and information described in the Investigator's reports were not available to Glasser, but that he presented all the witnesses available and the full evidence at hand, but that this evidence was not sufficient to induce the Grand Jury to indict the three parties last mentioned. There seems to be an assumption in the opinion that Glasser did not tell the Grand Jury to indict Kaplan, Raubunas, and Dewes. However, Ellis testified that Glasser told the Grand Jury whom to indict and White states the same thing and White at Glasser's direction gave them the names with that of Kaplan heading the list. It is clear, therefore, that the Grand Jury did not follow Glasser's

recommendations as to the defendants who should be indicted. This is further demonstrated by the testimony by the foreman of the Grand Jury, Gates (Tr. 608) that they exercised their best judgment as to whom to indict and who should not be indicted, in accordance with Judge Wilkerson's instructions to act only upon such evidence as would be sufficient in a court of law.

The Kwiatowski Case.

The opinion says:

> On August 25, 1938, one Walter Kwiatkowski was arrested while driving an automobile containing untaxpaid alcohol, taken to Glasser's office and charged with unlawful possession of distilled spirits. He was released from custody upon a bail bond furnished by defendant Horton. Prior to the hearing before the United States Commissioner, Horton informed Kwiatkowski that "he could fix the case for $600." Kwiatkowski withdrew $3750 from his savings account in a Chicago Bank and gave Horton $600. The Commissioner dismisses the complaint. Glasser appeared for the Government.

The statement that the car in which Kwiatkowski was arrested contained untaxpaid alcohol seems incorrect (Tr. 397).

Kwiatkowski also denied on the witness stand that he gave Horton $600 to fix the case (Tr. 415).

However, with these matters Glasser had no connection and his conduct of the case appears to have been proper in all respects. Investigator Rossner testified (Tr. 398) that he made a full disclosure of the facts at the hearing before the Commissioner, after which Kwiatkowski was discharged by the Commissioner. The evidence indicates that Glasser was never requested by the Alcohol Tax Unit to reopen the Kwiatkowski case. There was no proof that the letter and report of November 10, 1938, (Tr. 585-586) was ever delivered to Glasser. Glasser denied that he ever received this supplemental report (Tr. 963).

Therefore, we respectfully submit that there is no indication of lack of conscientious performance of duty in this transaction, much less criminal misconduct.

The Abosketes Matter.

The opinion says:

> In February, 1939, Investigator Thomas Bailey informed Glasser that one Frank Brown, recently convicted of a liquor violation and confined in the Cook County Jail, desired to impart information relative to others implicated in the violation. Brown was brought to Glasser's office and there stated that one Nick Abosketes was connected with the illegal operation of the still upon the Murdock Farm, in Illinois. Shortly thereafter one William M. Brantman from Chicago, called Nick Abosketes over the telephone at Milwaukee, Wisconsin. The following day Abosketes came to Brantman's office in Chicago. Brantman told Abosketes that he had connections with the Federal Building and could stop things, and that Brown had given certain information to the Federal people connecting him with the Murdock Farm still. On April 19, 1938 Abosketes paid Brantman $3000 in cash, obtaining therefor a receipt in which Brantman stated the money was being paid on account of services. Brantman never rendered any service to Abosketes. Several weeks later Brantman called upon Abosketes at Milwaukee and informed Abosketes that everything was stopped and under control. The record discloses that the $3000 was delivered to Kretske.

The Opinion seems to assume that Brown was willing to be a witness against Abosketes. Such is not the fact. Brown was one of twelve men convicted by Glasser for operation of an illicit still, on the Murdock Farm in McHenry County, Illinois. He was under sentence of five years to the penitentiary. Brown refused to testify against Abosketes, unless given a promise of consideration on behalf of himself and the other convicts (Tr. 939). Bailey's testimony is consistent with that of Glasser on this point (Tr. 648). Glasser and investigator Herrick went to Wash-

ington for the purpose of obtaining official authority to make such a promise to Brown. They were unsuccessful in obtaining the authority in question.

At the time Brantman first told Abosketes that Brown had given information to the Federal people implicating Abosketes that statement was not true so far as Glasser was concerned and Glasser was in fact preparing to go to Washington, which he did shortly before February 25th, with Herrick, to get authority to promise Brown and his associates clemency *if* they could furnish testimony that would lead to the conviction of Abosketes. Because of inability to obtain the authority mentioned and inability to secure testimony of Brown or his associates against Abosketes, Glasser was unable to proceed further with the proposed prosecution of Abosketes. In fact apparently Glasser was advised by Herrick and Burns that the authorities in Wisconsin had sufficient evidence to convict Abosketes and that the prisoners, Brown and associates, should be permitted to go to serve their sentences. This was sometime prior to March 24th, on which date the prisoners were sent to the penitentiary.

Bailey also evidently felt the prosecution of Abosketes in Illinois was impracticable, as he testified he never discussed the Abosketes case with Mr. Glasser after March 10th (Tr. 649).

It is clear that Brantman did not obtain any information about the Abosketes matter either directly or indirectly from Glasser. The prisoners were sent to the penitentiary in March and Brantman did not obtain the $3,000 from Abosketes until April 19th. Brantman could have known from the very fact that the men had been taken to the penitentiary that any efforts to obtain their testimony against Abosketes had been unsuccessful. If Glasser had been trying to frighten Abosketes into giving the $3,000 to Brantman, he would have caused the prisoners to be kept in Chicago

in order to give the impression that they were furnishing testimony against Abosketes.

There is not the slightest evidence we submit of any protection of Abosketes by Glasser nor is there any indication of lack of conscientious performance of duty or much less criminal misconduct in this transaction.

Summary of the Evidence in the Opinion.

The summary of the evidence of the Government in the opinion when completed by the inclusion of the additional facts above set forth by us, we submit, does not weigh against Glasser's innocence. The summary in the opinion may be briefly analyzed, as follows, viz.:

> "(1) The relations existing between Glasser and Kretske while employed as assistant United States District Attorneys and after Kretske's separation from the service."

There is nothing in these relations indicating misconduct on Glasser's part.

> "(2) The relations between Kretske and Roth and Roth's employment in liquor violations upon Kretske's recommendation."

Manifestly this matter has no application to Glasser.

> "(3) The relations between Glasser, Kretske, Horton and Kaplan."

The evidence shows no relation between Glasser and Horton. As to Kaplan, the testimony of Raubunus that he saw Glasser in an automobile with Kretske and Kaplan is so insubstantial and incredible that we submit it is without force.

> "(4) The knowledge that Horton had concerning the proposed indictment of Swanson and Del Rocco; the payment of $500 to Horton; and the failure to indict Swanson and Del Rocco."

As we have shown, we believe, there was no intention by the authorities to indict Swanson and Del Rocco at the

time of this alleged statement by Horton. Those parties had not been arrested and no report had been made by the Alcohol Tax Unit to Glasser as to their alleged connection with the still or requesting their indicting.

> "(5) The meeting of Kretske at Hodorowicz's store; the recommendation of Roth as attorney to defend; the payment of currency to Kretske; the statement of Kretske 'not to worry, everything will be taken care of'; Glasser to receive part of the money; and the striking of the indictment."

Glasser had nothing to do with the alleged actions of Kretske and Roth. Glasser's action in striking the indictment was on the recommendation of Investigator in Charge Ritter. This was not disputed by the Government or Ritter.

> "(6) The payment of $800 by Frank Hodorowicz to Kretske to be delivered to Red; Kretske's statement 'Everything is taken care of for tomorrow morning'; and the discharge of the violators the next morning."

As shown by the undisputed evidence this case was dismissed by the Commissioner because of the wrongful search of premises under a search warrant. Glasser did not prepare the search warrant, and, of course, had nothing to do with the serving of it. Necessarily, therefor, he was not responsible for the dismissal of the case. Moreover the hearing had been completed, the case taken under advisement by the Commission, and everything that Glasser had to do in the course of his official duty had been completed before the time of the alleged payment of the $800.

> "(7) The indictment of Dowiat, Frank and Peter Hodorowicz; the retaining of Roth to defend; and his discharge after Hodorowicz was told by Glasser that 'all the money in the world could do him no good this time.' "

The statement by Glasser to Frank Hodorowicz was for the purpose of showing him the futility of attempting a defense. The emphasis by the Government upon the words "this time" seems without foundation. Glasser in making

this statement probably had in mind the fact that Frank Hodorowicz had escaped prosecution in the case in which he had been indicted in Indiana, in 1929, and had also escaped prosecution in connection with the case described by Judge Barnes where the prosecution of Frank Hodorowicz and his associates was spoiled by an investigator, whom the officials of the Alcohol Tax Unit said was "wrong".

"(8) The relations between Raubunas and Kaplan and between Kaplan, Kretske and Glasser."

This seems to be a repetition of paragraph 3 so far as Glasser is concerned.

"(9) Glasser's conduct and actions relative to Raubunas, Kaplan and Dewes concerning the Western Avenue and Spring Grove stills."

The evidence shows that Glasser presented all the witnesses and evidence available to the Grand Jury and handled these matters properly.

"(10) Glasser's actions and conduct concerning Brown and Abosketes; and the payment of $3,000 by Abosketes to Brantman and by Brantman to Kretske."

Glasser endeavored to obtain the testimony of Brown and associates against Abosketes but was unsuccessful in this effort and therefore could not prosecute Abosketes. Glasser's conclusion after these efforts that the prosecution of Abosketes was impracticable evidently was concurred in Investigators Bailey, Herrick and Burns. No connection of Glasser is even suggested by the evidence between the alleged payment of $3,000 by Brantman to Kretske.

"(11) The conduct and statements of Roth in the Wroblewski case."

Manifestly Glasser had no connection with the conversation between Roth and Alexander Campbell in Indiana. The first conversation, if true, would have to be considered an independent attempt by Roth to influence Alexander Campbell. With this Glasser had nothing to do. The

second conversation, if true, would be an admission by Roth against himself. Glasser had no connection therewith and in addition at the time it is said to have occurred Glasser had left the Government service and all power on his part to carry on the alleged conspiracy charged in the indictment had ceased.

The summary of the Government evidence and the opinion of the Court herein is rather similar to the summary of the Court of Appeals in the case of the *United States* v. *Manton*, 107 F. (2d) 834. However, the substance of the evidence in the two cases is fundamentally different. In the Manton case there was evidence of numerous receipts of large sums of bribe money by Manton and many other irregular actions on his part. No such evidence is in the case at bar. The evidence in the Manton case is summarized at Page 844 of that Opinion:

> "(a) The long and friendly relations between Fallon and Manton. (b) The employment of Fallon in obtaining loans for the Manton corporations. (c) The apparanetly gratuitous introduction by Fallon to Manton of persons interested in cases while they were under consideration or pending. (d) Lotsch's testimony that after being introduced by Fallon he paid to Manton $10,000 ostensibly for the corruption of Judge Thomas, received from Manton a trial brief of the government in that case, consulted with him about the language of an opinion before it was handed down, was advised to leave New York because of an investigation then in progress or threatened, was admonished to keep secret the Thomas matter, and that Manton, after being told, upon inquiry by him, the date when a particular transaction had occurred, said it was barred by the statute of limitations. (e) Manton's relations with Reilly, their telephone conversations, in which Manton expressed anxiety about Fallon's being carried on the payroll because of a pending investigation, Manton's suggestion that the circumstance would be embarrassing to him and that the record pages relating to the matter should be pulled out, that certain records be destroyed because of the Art Metal investigation, and that the statute of limitations would

protect them in that investigation. (f) The manipulation of the schedule of assignments of judge to enable Manton to sit in the Schick case. (g) The loans made at Manton's request by or through the intervention of persons interested in some of the cases during their pendency, one of the most significant of these being the loan of $25,000 made in the name of Sullivan by Lotsch to Manton at the latter's solicitation on the very day of the argument in the General Motors case, the proceeds of which were immediately handed by Sullivan to Manton, a method adopted to conceal Manton's connection with the transaction. Similar technique appears in respect of the loans made by Andrews to or for corporations in which Manton was interested through Spector as a conduit, the details in respect of which will more fully appear when we come to consider the case of Spector."

Testimony of District Judges on Behalf of Glasser.

We respectfully ask leave to call attention to what seems to be an advertency in description of the testimony of the three district judges who appeared as witnesses for Glasser. The Opinion states that they testified "that so far as they could observe he rendered the Government conscientious service."

We respectfully call attention to the testimony of Judge Igoe that Glasser acted under his close supervision, making daily reports to him and that all of Glasser's important actions had his approval. Also to the testimony of Judge Barnes that the Hodorowicz cases were not prosecuted earlier against the principals by Glasser because the Alcohol Tax investigator working on the case was "wrong" and did not perform his work properly. Judge Barnes testified that this explanation was volunteered to him in chambers by the representatives of the Alcohol Tax Unit when Glasser brought to his attention a statement by counsel representing one of the Hodorowicz group that a case had been fixed. Judge Barnes also said that Glasser was

an excellent prosecutor, possibly too good for the criminals (Tr. 720).

Claims of Error Discussed by the Court.

A careful study of the Court's opinion leads us to the conclusion that the court felt that some of the claims of error were well founded but that the Appellate Court did not consider them reversible error because of the supposed strength of the evidence against Glasser. This feeling we believe we have shown to be based upon a misunderstanding of the record. We, therefore, respectfully submit that the court should alter its decision with respect to the reversible nature of some of the errors complained of. This is in accordance with the teaching of *Berger* v. *U. S.*, 295 U. S. 78, to the effect that errors which might be immaterial where the evidence of guilt was strong, would be considered prejudicial and cause for reversal in cases where the evidence was weak or evenly balanced. In that case the court said:

> "Under these circumstances prejudice to the cause of the accused is so highly probable that we are not justified in assuming its non-existence. If the case against Berger had been strong or, as some courts have said, the evidence of his guilt overwhelming, a different conclusion might be reached."
>
> *Gold* v. *U. S.*, 26 Federal (2) 185.
>
> *Fliashnick* v. *U. S.*, 223 Federal 736.

In the present case, the opinion of the court states that the following were not such errors as to warrant reversal:

The appointing of Stewart to represent Kretske, inasmuch as there was a great amount of testimony clearly imputting the receipt of bribe money by Kretske and none by Glasser, and inasmuch as most of the incriminating reference to Glasser consisted of alleged statements by Kretske that he was going to pay some or all of the bribe

money to Glasser, we submit that it is manifest that the interests of Glasser and Kretske were conflicting and that Glasser could not properly be represented by the same attorney as was Kretske. We again urge this as an error decidedly prejudicial to Glasser.

Another matter decidedly injurious to Glasser and which the court states did not constitute sufficient cause for reversal, was the admission of testimony to the effect that Investigator Bailey had a good war record and had not been ordered out of a courtroom in West Virginia. This was claimed to be rebuttal of cross-examination of Glasser to the effect that he told Roth he had heard a rumor that Bailey had been ordered out of a courtroom in the South. The cross-examination itself was improper. The so-called "rebuttal evidence" was still more improper. This for several reasons:

It was a collateral matter; the so-called evidence did not controvert that Glasser had heard such a rumor, but denied the truth of the rumor; and the additional evidence that Bailey had a good war record was incompetent under any legal viewpoint.

Manifestly, the only purpose and effect of this testimony was to build up the credibility of Bailey as a witness for the Government and to injure the credibility of Glasser as a witness defendant before the jury. Bailey was one of the chief witnesses against Glasser and the effect of this incompetent testimony doubtless was extremely prejudicial to Glasser's interests.

Another injurious incident consisted in the limitation of the cross-examination of Mr. William J. Campbell when he testified in impeachment of a part of Glasser's testimony. The opinion of this court states that large discretion is committed to the trial judge in controlling the cross-examination and great latitude is permissible. This rule, however, does not operate until a fair and proper

cross-examination has been had. In the present case the limitation was placed upon the cross-examination before any cross-examination whatever had been made and it was ruled that the cross-examination would be restricted to what the witness had testified on direct examination. This ruling apparently was understood by counsel as preventing all inquiry other than as to the exact words used in the conversations in dispute. Mr. Stewart stated he would like to go into other matters to show which version was most likely true, to which the trial court replied:

"No, you are limited to it."

This again we submit was a prejudicial error as it, in all probability, constituted an effective blow to Glasser's credibility in the eyes of the jury.

Another instance which the opinion states did not constitute reversible error was the admission of the testimony of Alexander Campbell as to alleged conversations with Roth in Indiana regarding the Indiana prosecutions against the Wroblewskis. The opinion of the court here seems to consider this testimony admissible against Roth, but apparently overlooks the fact that it was not limited by the court in its application to Roth, but went in against Glasser as well, over the objection of the latter. Inasmuch as these conversations, if they actually occurred, were indicative of direct attempt at corruption, it seems plain to us that they were highly prejudicial as evidence against Glasser.

Errors Prejudicing Glasser's Defense.

Several errors which we deem extremely prejudicial to Glasser's defense have not been mentioned in the opinion of the court. One of these was the incident in which Frank Hodorowicz, government witness, was allowed to testify at length to the effect that he paid $800 to an unidentified person, named Frank Miller, because Frank

Miller said he could take care of the Peter Hodorowicz and Walter Hort case for that much money Frank Miller, of course, was not produced as a witness at the trial. There was not the slightest connection shown between Frank Miller and any of the defendants on trial. There was not even testimony that Frank Miller ever talked to any of the defendants on trial. Hodorowicz said that Frank Miller was a bootlegger—he was not a lawyer (Tr. 308). Hodorwicz also testified, on direct examination by the government attorneys and the court, that he gave $500 to Frank Miller in another case involving Walter Hort (Tr. 308-309). Hodorowicz testified that this Frank Miller told him that they would drag the first case along. Hodorowicz testified to his conclusion that he, Frank Miller, did drag it along, and that in the second case he, Frank Miller, got "them" (meaning apparently Walter Hort) discharged "in front of the Commissioner". Frank Hodorowicz testified that Frank Miller did not mention any of the defendants in the Glasser conspiracy case at the time he was making arrangements with Hodorowicz to "take care of" the two cases for which the money was said to have been paid to Miller (Tr. 308). Unfortunately, there was no objection to this testimony by any of the counsel for any of the defendants. However, its incompetency is so apparent and the prejudice so evident that we respectfully submit this court could very properly consider it as matter that should have recognition on the appeal.

Another matter which we contend was erroneous and which evidently caused great prejudice to Glasser's defense was the refusal of the prosecuting attorneys to show exhibits to Glasser while he was under cross-examination and being questioned about the contents of such exhibits (Tr. 979-982). Inasmuch as the exhibits were very numerous and many of them voluminous, Glasser was at a great disadvantage in being cross-examined as to their contents

without being allowed to see them. The prosecuting attorneys finally stated, in the presence of the jury, that Glasser kept saying that he did not know, in answer to these questions, and that they would allow him to examine the files during the week-end intermission of court. When Glasser applied Saturday morning at the United States Attorney's Office, he was denied opportunity to examine these exhibits, the excuse given being that he was not accompanied by his lawyer. Monday morning the cross-examination was resumed, with a change of the prosecutors, and extensive cross-examination in which again Glasser was at a great disadvantage because of the inability to make preparation by examination of the exhibits. We respectfully submit that this matter was extremely prejudicial to Glasser.

Another matter which seems to us of considerable importance was the lengthy cross-examination of Glasser as to the so-called personnel record (Tr. 989). This personnel record consisted of several typewritten pages, one of which bore Glasser's signature. It had no connection whatever with the issues at trial. It consisted of mimeographed questions and typewritten answers as to Glasser's attendance at high school, law school, etc., and had been prepared only a few months before the trial, evidently at the request of the United States Attorney. Some of the typewritten answers on these sheets were incorrect, particularly the statement that Glasser had the degree of L.L.D. A lengthy and severe cross-examination was made of Glasser as to the contents of this so-called personnel record, notwithstanding his statement that some of the answers were incorrect due to clerical errors or misunderstandings, and that the correct information as to the matters therein set forth was in the possession of the United States Attorney's Office, having been given in a prior or original personnel record. Mr. Ward promised to produce the original

record later, but never did so. The non-production of the original record indicates, we respectfully submit, the truthfulness of Glasser's statement that the errors in the second personnel record were clerical and inadvertent. Moreover, as a matter of law, cross-examination upon this subject was improper, as being a collateral subject or act of alleged misconduct not connected with the issues of the case on trial. The rule of law is intended to prevent surprise upon the defendant by dragging into the case and his cross-examination matters against which he can not be prepared to defend. The justice of the rule is clearly exemplified in the present instance where Glasser was taken entirely by surprise by the introduction of this matter into his cross-examination, was subjected to questions which necessarily would arouse suspicion of his integrity and credibility in the minds of the jury in a matter which was left without the opportunity of defense as it arose in the closing moments of the trial, and the prosecuting attorney stated that he would get to or produce the original record, which Glasser contended was correct, and which indicated that the errors in the second record were innocent, but which original, or first record, was never produced by the prosecuting attorney. Manifestly, we submit the prejudice in this matter was very great. Unfortunately, there was no objection to this cross-examination by counsel for appellant, but we respectfully submit that it was a matter of such importance and so prejudicial to appellant that this court may very properly take cognizance of it.

We respectfully submit that the opinion of the court misapprehends the evidence in connection with Nick Girardi, which led to the introduction in evidence of the photograph of Girardi, with the words "auto-thief" and "counterfeiter" on the back thereof. Mrs. Jurkas did not say that Nick Girardi was the owner of the still in the basement of Jurkas home. Instead, she said that the owner of the still

lived in Gary, Indiana, and that is all she knew about him (Tr. 611), and that his name was Jack Clementi (Tr. 614). Mrs. Jurkas testified on direct examination that she did not tell Glasser about Nick Girardi.

> "Q. Just a minute—while you were with Mr. Glasser did you tell him that you had been to see Nick Girardi?
> A. No, I never mentioned Nick's name to him."

Apparently, the opinion of the Appellate Court drew the same erroneous assumption from the testimony of Mrs. Jurkas that the trial court did, namely that Nick Girardi was the owner of the Jurkas still. Undoubtedly, therefore, the jury drew the same erroneous assumption. Therefore undoubtedly the jury attached great importance to this photograph of Nick Girardi, the supposed owner of the still, together with the words "auto-thief" and "counterfeiter" on the back thereof. The opinion of the court here states that Glasser took no action concerning the alleged illegal operation of this still, which, of course, is an intimation that Nick Girardi was the owner of the still and should have been indicted for that supposed offence by Glasser. However, it is clear that Glasser could take no proper action in the way of prosecution, for the reason that the record shows that Nick Girardi was not the owner of the still and that the owner was Jack Clementi, whose whereabouts were unknown, except that Mrs. Jurkas thought he lived in Gary, Indiana. Evidently Jack Clementi's whereabouts never were ascertained, as there was no proof made in the record that he was ever seen or known to anybody other than Mrs. Jurkas.

Tony Jurkas, the husband of Mrs. Jurkas, also testified that John Clementi paid him in connection with the still. Jurkas, an inconsequential underling, was indicted, by Glasser's successors, for the still, pleaded guilty, and was placed on probation. He was not represented by counsel.

Unfortunately, no objection was made to the introduction of the photograph of Nick Girardi, or the confused testimony of Mrs. Jurkas, which led to the misapprehension of the effect of her testimony. However, we respectfully submit that the matter is of such importance that this court may very properly take cognizance of it.

Improper Selection of Trial Jurors.

The opinion of the Appellate Court states that the trial court considered the affidavits filed by appellants and was convinced that no prejudice resulted to appellants from the incidents complained of in their affidavits in support of motion for a new trial. Glasser's affidavit stated that because of the facts described in said affidavit he did not have a trial by a jury free from bias, prejudice and prior instructions, and that thereby his rights were prejudiced in that he was deprived of trial by jury as guaranteed to him by the laws and Constitution of the United States. These allegations were not controverted by the Government and therefore must have been accepted as true by the trial court. Therefore, we respectfully submit, it was beyond the province of the trial court to find that no prejudice resulted to Glasser because such finding was in direct violation of the only evidence and information upon which the court could act, namely the allegations in Glasser's affidavit. In short, the ruling of the court upon this point was in the nature of a summary judgment. We submit that the allegations of the affidavit clearly show prejudice to Glasser by this method of selection of the female jurors. The only method by which the trial court by any possibility might ultimately have been justified in a finding of non-prejudice would be if he had required the Government to deny the allegations of prejudice in Glasser's affidavit and then have caused evidence to be heard pro and con, upon the issue of the existence of preju-

dice. This was the course recommended in *Ogden* v. *United States* 112 Fed. 523, 3d Cir. In short, we respectfully submit that the trial court had no right to decide that prejudice was not existent when his decision was based entirely upon the sufficient allegations of an affidavit showing such prejudice, and which affidavit further made an offer to prove all the matters relied on therein.

Conclusion.

In conclusion we respectfully submit that by reason of the foregoing matters the petition for rehearing should be granted.

Respectfully submitted,

JOHN ELLIOTT BYRNE,
Attorney for Petitioner.

DANIEL D. GLASSER,
Petitioner, Pro se.

And on the same day, to-wit: On the twenty-fourth day of December, 1940, in cause No. 7316, there was filed in the office of the Clerk of this Court, a petition for a rehearing, which said petition for a rehearing is in the words and figures following, to-wit:

IN THE

United States Circuit Court of Appeals

FOR THE SEVENTH CIRCUIT

No. 7316

THE UNITED STATES OF AMERICA,
Plaintiff-Appellee,

vs.

NORTON I. KRETSKE,
Defendant-Appellant.

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

Honorable
Patrick T. Stone,
Judge Presiding.

PETITION FOR REHEARING

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Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

Honorable
Patrick T. Stone,
Judge Presiding.

PETITION FOR REHEARING

To the Honorable Judges of the
Circuit Court of Appeals for the Seventh Circuit:

MAY IT PLEASE THE COURT:

Appellant desires respectfully to point out to this Honorable Court certain erroneous assumptions apparently indulged in by this court in arriving at its opinion heretofore rendered in this case. For the purpose of brevity this appellant re-asserts all the points which he raised in his original brief, as well as his reply brief,

and begs leave of this court to adopt the arguments of appellants Glasser and Roth in their respective petitions for rehearing, insofar as the same may apply to the points heretofore raised by him.

THE DEMURRER.

The court in its opinion holds that the indictment is not duplicitous for the reason that it charges "merely a conspiracy to defraud the United States Government".

The conspiracy statute may be violated either by a conspiracy to defraud the United States or a conspiracy to violate a statute of the United States. If this indictment merely charges a conspiracy to defraud the United States then the contention of appellant that the indictment is duplicitous should properly be overruled. However, this appellant contends that such is not the case, and desires to call to the court's attention the language in paragraph 14 of the indictment (Tr. 28) which follows very closely the language of Section 91 of Title 18, U. S. C. A., viz.: "that is to say, by promising, offering, causing and procuring to be promised and offered, money and other things of value to an officer of the United States, and to persons acting for and on behalf of the United States in an official function, under and by authority of a department and office of the Government of the United States, with intent to influence his decision and action on certain questions, matters, causes, and proceedings which were at times pending, and which were by law brought before such officer or officers in his or their official capacity, and with the intent to influence such officer or officers to commit and aid in committing, and to collude in committing certain frauds on the United States, and to induce such officer or officers to do and to omit from doing certain acts in violation of

his or their lawful duty." The foregoing language, appellant respectfully submits, makes the alleged conspiracy one to violate a statute of the United States, namely Section 91 of Title 18, U. S. C. A.

In *Brown* v. *United States,* 145 Fed. 1 (C. C. A. 2), it was held where the first part of a count in an indictment set forth that certain persons "unlawfully did conspire" to defraud the United States, the conspiracy "to be effected in the manner following; that is to say" —and the violating part stated the details of the alleged conspiracy, the latter part was not to be construed as a videlicet separate from the charge of the information but that the whole sentence may be considered as a charging part.

In the case at bar the indictment charges a conspiracy to defraud the United States, *that is to say* by violating the provision of Section 91 of Title 18, U. S. C. A.

Following the reasoning in the *Brown* case, *supra,* it must be conceded that the language following the phrase, "that is to say", must be construed as part of the charging part of the indictment. Since this is true the indictment in this case charging, as it does, conspiracy to defraud the United States *and* a conspiracy to violate a statute of the United States, is, appellant respectfully submits, duplicitous.

Appellant, Kretske, desires to again call the court's attention to the cases which he cited under Point 2, Section A of his original brief, to the effect that a conspiracy to violate a statute such as Section 91, will not lie.

In its opinion this court makes reference to the case of *United States* v. *Manton,* 107 Fed. (2d) 834, where it was held that a conspiracy to defraud the United States of a lawful function of its judicial powers free from

corruption, improper influence, dishonesty and fraud is an indictable offense. A reading of the opinion in the *Manton* case does not disclose that the indictment charged that a conspiracy was to be carried out by "promising, offering, causing and procuring to be promised and offered, money and other things of value to an officer of the United States." Herein lies the great difference between the indictment in the *Manton* case and the indictment in the case at bar. In the *Manton* case the court says, "It (the indictment) charges a conspiracy to obstruct justice and to defraud the United States, the scheme of resorting to bribery being averred only to be a way of consummating the conspiracy * * *." In the instant case the indictment charges that the offense was the promising, offering and causing and procuring to be promised and offered money and other things of value to an officer of the United States.

In view of the above, appellant contends that the violation of Section 91 as alleged in the charging part of the indictment at bar, was not an indictable conspiracy.

Appellant, for the reasons aforesaid, respectfully petitions this Honorable Court for a rehearing.

Respectfully submitted,

JOSEPH R. ROACH,
Attorney for Appellant.

And on the same day, to-wit: On the twenty-fourth day of December, 1940, in cause No. 7317, there was filed in the office of the Clerk of this Court, a petition for a rehearing, which said petition for a rehearing is in the words and figures following, to-wit:

IN THE

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

THE UNITED STATES OF AMERICA,
Plaintiff-Appellee,

vs.

ALFRED E. ROTH,
Defendant-Appellant.

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

Honorable Patrick T. Stone, Judge Presiding.

Petition for Rehearing.

ALFRED E. ROTH,
10 N. Clark Street,
Chicago, Illinois,
Pro Se.

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IN THE

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE SEVENTH CIRCUIT.

No. 7317

THE UNITED STATES OF AMERICA,
Plaintiff-Appellee,
vs.
ALFRED E. ROTH,
Defendant-Appellant.

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

Honorable Patrick T. Stone, Judge Presiding.

Petition for Rehearing.

To the Honorable Judges of the Circuit Court of Appeals for the Seventh Circuit:

MAY IT PLEASE THE COURT:

The defendant Roth desires respectfully to point out to this Honorable Court important matters that appear to have been overlooked and erroneous conclusions of fact apparently indulged in by this Court in arriving at its opinion heretofore rendered in this cause. In the interest of brevity defendant will confine himself to some of the important matters in connection with some of the points. This defendant does not waive any point urged in his original and reply briefs and fully reasserts them with equal force.

THE MOTION TO QUASH. The defendant contends that the record fails to show that the indictment was returned into

open court by the grand jury. The opinion at page 3 says, "The record now before us shows * * *; that on September 29, 1939 at a regular term of the District Court of the United States for the Eastern Division of the Northern District of Illinois, the grand jury returned four indictments in open court." The record shows that on September 29, 1939, an order was entered discharging the grand jury for the September term (Tr. 39). The record further shows that the portion of the order "The Grand Jury returned four indictments in open court" was "Added 10/30/39" (Tr. 39) thirty-one days after the discharge of the grand jury without any showing that there was any hearing or order by any court to correct any omission by the clerk in recording his orders, on September 29, 1939. This defendant believes that this Honorable Court overlooked this fact and the Court's attention is respectfully directed to it. The motion to quash should have been sustained for the reason that it appears the record does not affirmatively show the return of the indictment in open court by the grand jury before their discharge.

THE SUFFICIENCY OF THE EVIDENCE. This Honorable Court at page 6 of the opinion says, "We think it will suffice if we but enumerate the more important facts and appellant's connection or association with the suits and matters involved in the conspiracy." Here again in the interest of brevity this defendant will confine himself to these more important facts and with relation to him.

United States v. One Chrysler Sedan.

The opinion at page 7 says:

> "One of the matters involved in the conspiracy related to a Chrysler Sedan. It was a libel action in which it was charged that the automobile, seized upon the premises of one Leo Vitale at Peru, Illinois, had been used in connection with a liquor tax violation. The cause came up for hearing before a district Judge

on December 23, 1938. Appellee was represented by Glasser, and Roth represented Rose Vitale, wife of Leo Vitale. Roth informed the trial court that the automobile belonged to Mrs. Vitale and had not been used in the manufacture of alcohol. Thereupon an investigator of the Alcohol Tax Unit, who had caused the seizure, informed Glasser that Roth was not informing the court of the true facts nor advising the court that Vitale had heretofore been convicted and sentenced to the penitentiary in the Southern District of Illinois for liquor tax violations, and requested that he be permitted to so advise the trial court. Glasser directed the investigator to leave the court room. The trial court ordered that the automobile be returned to Rose Vitale.

"Shortly after December 23, 1938, this investigator informed Glasser that he had a number of witnesses to whom Vitale had said that he (Vitale) had "Got out of this for $900." and the investigator suggested that Glasser inquire of Vitale as to who received the $900.00. Glasser said he would, but he never did."

The record shows that Rose Vitale, on September 22, 1938, filed a verified Statement of Claim with the Alcohol Tax Unit that she was the owner of the Chrysler Sedan. On October 24, 1938, she filed a sworn Answer and Claim in the libel action, alleging that she was the sole owner of the automobile, and denying in detail that the automobile was used for any unlawful purposes as charged in the libel (Exhibit 36).

Government witness, Agent Dowd, testified "Rose Vitale, the wife of this man, was the claimant of the ownership of the car, and before Judge Barnes there was presented a certified copy of the Secretary of State record, showing she was the owner and licensee of that car" (Tr. 222). Judge Barnes, before whom the libel action was tried, testified "I remember that case, the claimant was the wife of the bootlegger" • • • "The case was tried on that statement," (having reference to the agent's report) (Tr. 717).

The testimony of Judge Barnes (Tr. 718) is as follows:

"Q. And the point involved here, Judge, is this. Were you sufficiently informed concerning the facts involved in that case to make a decision on the law and the evidence?

A. Well, it is the agents' statement. They never testified to more than their statement. They try their cases frequently on their statements, and that statement is not sufficient to forfeit a car. The car was not in the place where the still was, the car belonged to the wife, and I had no more right to take it than I had to take yours.

Q. And anything the agent might have said could not have changed that? A. Well, he stated in writing what he expected to prove, what he expected to swear to.

Q. And under these circumstances, you very often hear the cases without the actual testimony? A. Very, very frequently.

Q. And did Mr. Roth appear to represent his client, and Mr. Glasser appear to represent the government in a proper fashion? A. They not only appear to, they did."

It seems that the result of this Honorable Court's analysis of the evidence as to Roth is that Roth represented Rose Vitale and that he informed the Court that the automobile belonged to Mrs. Vitale and had not been used in the manufacture of alcohol. This was known both to the Alcohol Tax Unit and the United States attorney long before the hearing by virtue of the verified statement of claim and answer and claim filed, as stated above.

It seems that this Honorable Court erroneously assumed and inferred that Roth was knowingly making an inaccurate statement to the court trying the libel. Was it not the duty of Roth as an advocate of his client's cause, based upon the sworn pleadings filed by his client, to make the statement that he did to the court? If he did not do so he would be neglecting his duty.

It seems that this Honorable Court assumed and inferred that Judge Barnes was not informed that Rose Vitale's husband was a bootlegger and had been convicted and sentenced, although the husband's criminal record was not material to the issue being then tried before the court. However, Judge Barnes was so informed because Judge Barnes testified, "I remember that case, the claimant was the wife of the bootlegger" (Tr. 717).

The alcohol tax unit agent made up and delivered the report to the United States Attorney and it was his report containing the facts in the case as prepared and presented by him that was before Judge Barnes.

The rumor picked up by Dowd that Vitale had said that he had got out of this for $900, although no witness was produced on the trial of the case at bar to substantiate it, does not prove that such money was paid and that Roth was in any way a party to any such payment, nor that Roth had any knowledge of the rumor or what Dowd claims he told Glasser. It seems unreasonable that Vitale would pay $900 to get out of this, namely, the recovery of an automobile appraised by the government at less than $500 (See Exhibit 36) by paying $900. If he had any reference to getting out of anything else, certainly that is entirely foreign to Roth's representation of Mrs. Vitale in the libel case. Roth did not know Leo Vitale, nor did he ever represent him in any case, civil or criminal. It might be stated for the information of this Court that the appellee in its brief mentioned a case in which Leo Vitale was involved criminally but in that case Mr. George J. Spatuzzuo represented Leo Vitale (Exhibit 165).

Roth did nothing more than any lawyer at the bar would do in advocating his client's cause and agreeing to have the case submitted on the agent's report, which is very frequently done as part of the established practice in the District Court, as testified to by Judge Barnes. To attach

any inference of guilt based upon Roth's conduct in this case so as to exclude the hypothesis consistent with his innocence, one must enter a field far beyond that of speculation.

United States v. Elmer Swanson, Anthony Hodorowicz and Clem Dowiat (6949 Stony Island Ave. Still Case).

The opinion at page 8 says:

> "It further appears that on December 31, 1937, Swanson and the Hodorowicz Brothers operated another still at 6949 Stony Island Avenue, Chicago, Illinois, which also was seized by the Government. Swanson was arrested and arranged for a bailbond through Horton. Roth was retained as an attorney to defend, having been recommended by Kretske, whom Swanson had met at Hodorowicz' hardware store.
>
> "Frank Hodorowicz operated a hardware store at 11823 South Michigan Avenue and it was there, early in 1938, that Kretske, Horton, Hodorowicz and Swanson met. Horton introduced Kretske. There it was that Kretske said he would take care of the case; for $1200 'it was supposed to be fixed up so nobody goes to jail.' $500 in currency was paid to Kretske at his office, the balance to be paid later. At that conversation Kretske said, 'Don't worry about a thing. Everything will be taken care of.' Kretske also said that Glasser was to get part of the money and part was to take care of another lawyer.
>
> "The case was placed on Judge Woodward's calendar, Glasser representing the Government and Roth the defendants. On April 28, 1938, on Glasser's motion, the indictment was stricken with leave to reinstate. Swanson paid no money to Roth for his services."

Government witness Anthony Hodorowicz denied any connection with the still. He testified, "I did not have any connection with a still at 6949 Stony Island Avenue (Tr. 343). Government witness Clem Dowiat also denied any connection with the still. He testified, "I was passing

near the premises and I was picked up" • • • • "After I was arrested I heard a still was found in that place" (Tr. 242). Government witness Frank Hodorowicz testified "As far as I know my brother Tony (referring to Anthony) was an innocent man. Just walking on by where a still had been raided and Clem was an innocent man, just happened to be in the neighborhood. I don't know nothing about Swanson" (Tr. 316).

While Swanson on the trial of the case at bar admitted that he was interested in this still, he testified that he surrendered when he learned that there was a warrant for him in connection with the operation of a still and said, "I came here because I knew that I was able to go right out on bond and the reason I had made the arrangements in advance was that it would save me the inconvenience of being held in custody and questioned. I didn't want to be asked any questions about the operation of that still by the Federal agents and if they asked me I would have denied any connection with it. I thought they didn't have any proof that I had any connection with it, and I was pretty sure that they didn't, because I had been quite successful in keeping myself out of sight as far as the actual operation of the still was concerned" (Tr. 233-234).

The three defendants made statements in Roth's office denying any connection with the still, on May 2, 1938, while they were preparing for trial, which were taken down in shorthand by Frances Bornhorst and reduced to writing. (See Exhibits 182-183 and 184 and testimony of Frances Bornhorst) (Tr. 830).

Government witness Anthony Hodorowicz testified as follows (Tr. 344-455):

> "The Witness: I was in Kretske's office with my brother Frank, Elmer Swanson and Clem Dowiat. When we were there a conversation was carried on with Mr. Kretske.

Q. What was said? A. We, we needed a lawyer.

Q. What was said by Mr. Kretske or you or anyone? Tell what conversation was had. A. Well, we needed a lawyer to defend us, he said,—

Q. Mr. Kretske was a lawyer, wasn't he?

The Court: Let him finish.

The Court: Q. Who said you wanted a lawyer to defend you. Did you tell Mr. Kretske that? A. We all wanted a lawyer.

Q. Did you tell Mr. Kretske that. Who was the spokesman for the crowd. A. My brother.

Q. What brother? A. Frank.

Q. What did he say to Mr. Kretske? A. He said: 'We need a lawyer to defend the boys.'

Q. What else was said? A. He said he could get a good lawyer.

Q. Mr. Kretske said in your presence, he could get you boys a good lawyer. A. Yes.

Q. What was then said? Did he tell you then who the lawyer was? A. No, he said he would send us to his office.

Q. And did he give you any address to Mr. Roth? A. Yes.

Q. You went to his office? A. Yes.

Q. When you got to his office, did you discuss with him this case? A. Yes."

At Tr. 347 Anthony Hodorowicz further testified as follows:

"Q. Now, Frank went up with you and acted as a spokesman when you talked with Mr. Kretske after you were arrested, is that right? A. Yes, sir.

Q. You were out on bond then? A. Yes, sir.

Q. And did you ask your brother Frank to fix that case for you? A. No.

Q. You did not want it fixed. A. I didn't know anything about that.

Q. You were an innocent man? A. Yes.

Q. All you wanted was a lawyer so you could be represented and bring out the facts? A. Yes.

Q. That was all you needed? A. Yes.

Q. You didn't need to fix anybody? A. No."

Government witness Elmer Swanson further testified as follows (Tr. 234):

"He (Roth) said we would go in front of the Commissioner first, and I could tell from the conversation with Mr. Roth that he was preparing for a hearing, before the Commissioner. Mr. Roth indicated it was possible the case was such that I might be discharged at the hearing, and he said he would do his best. Mr. Roth asked me questions along the lines you asked me, to try and find out what the Government might ask concerning me, because he was interested in trying to find out from me what they could prove against me, and I told him in a general talk, the same thing I have told you, that they didn't have anything as far as I knew. That is right. So when I went over there, I was prepared in case I was called as a witness in my own behalf before the Commissioner, to deny I had any connection with that still."

At Tr. 235 he further testified:

"As far as I could observe, it was a contest between the Government's lawyer and Mr. Roth as to whether we were going to trial that day, and Roth expressed some little displeasure that it was continued, and explained to us he would rather have the hearing, because he thought the Government didn't have anything to hold us and we could have won our case before the Commissioner, and he thought it was a kind of bad deal, they continued it, because while they were continuing it they might take it before the Grand Jury, and in that way we would be deprived of a chance before the Commissioner, and that is what happened. So when the case came up again before the Commissioner, the Gov-

ernment was again represented by Glasser, and it was dismissed because we had been indicted."

Government witness Commissioner Walker testified "that he (Roth) was vigorous and certainly very earnest in opposing a continuance" (Tr. 205).

The defendants were indicted and after having entered their pleas of not guilty in the district court on March 28, 1938, the case was set for trial on May 5, 1938. On May 2, 1938, the defendants were in Roth's office preparing for trial at which time their statements above referred to were taken and reduced to writing and a sketch, Exhibit 38, was prepared from the material furnished by the clients.

At Tr. 236 Swanson testified as follows:

> "I understood from Mr. Roth when it was continued that a certain other day was set, and I expected to have to come back on that other day to come to trial, and on that day we came down here again and we went over to Roth's office and talked it over again to make sure we were all ready for our defense. Mr. Roth asked us to come over. We were willing to go ahead with this plan, we had to defend ourselves, and when we got to court, we found the court doing business but our names were not called, and we sat waiting for them to be called, so did Mr. Roth, and then it was a surprise to us when they finished the call, and our names were not called, and Mr. Roth then went down to look in the Clerk's office to see what happened. Then he said something about being stricken off with leave to reinstate, and he said the Government did that without letting him know, and of course we didn't know about it before Roth told it there, because if we had, we wouldn't have gone to all this trouble to get ready for trial."

On April 28, 1938, on motion of the Government the cause was stricken with leave to reinstate and is still in the same status (Exhibit 226). Glasser testified that the case was

stricken off with leave to reinstate at the request of Agent Ritter, the investigator in charge of the agents of the Alcohol Tax Unit. This stands uncontradicted and not denied. Roth received his compensation from Kretske in the sum of $100.00 for representing the defendants (Tr. 868).

It seems that the result of this Honorable Court's analysis of the evidence as to Roth is that Roth was retained as an attorney to defend, having been recommended by Kretske, and that Swanson paid no money to Roth for his services.

It seems that this court erroneously assumed and inferred that Roth was not paid for his services in representing the defendants Swanson, Anthony Hodorowicz and Clem Dowiat. He was paid $100.00 by the attorney forwarding the case. The fact that one lawyer referred his trial work to another lawyer who specialized in the particular field, and the fact that the forwarding lawyer made payment directly to the engaged lawyer for his services from the fee obtained from his clients, certainly does not warrant the assumption of an inference of guilt to the exclusion of the hypotheses consistent with his innocence. If the facts with relation to the defendant Roth is evidence of guilt then every lawyer at the bar who accepts a referred case and obtains his fee from the lawyer referring the case, subjects himself to a hazard so great that one might as well surrender his license to practice than expose himself to the dangers of professional disgrace and being branded a criminal.

Many lawyers other than Kretske testified to having referred Federal matters to the defendant Roth, Sidney Baker (Tr. 749), Packard Barnes McCaughey & Schumaker (Tr. 749), Ross & Berchem (Tr. 796), William McCabe, State's Attorney of Will County, Illinos, and Charles Rob-

son of Joliet, Illinois (Tr. 889), Irwin Clorfene, Assistant State's Attorney of Cook County (Tr. 890), Herbert H. Kennedy of the firm of Moses, Kennedy, Stein & Bachrach, testified that he conferred with Roth, with reference to Federal matters (Tr. 783).

There is nothing in the record that Roth was present at, or had knowledge of, or participated in any conversation with any person in connection with this case other than conversations and acts which were legal and ethical.

United States v. Frank Hodorowicz, Mike Hodorowicz, Peter Hodorowicz and Clem Dowiat.

The opinion at page 9 says:

> "It further appears that on June 3, 1938, Clem Dowiat and Frank and Peter Hodorowicz were indicted, charged with unlawful possession of distilled spirits. Roth was retained to represent the defendants, and while the case was pending in the District Court, Frank Hodorowicz and Kretske had a conversation in which Kretske stated that nothing could be done for Hodorowicz because 'There is too much heat.' Thereafter Frank Hodorowicz called at Glasser's office and complained that he was getting a raw deal to which complaint Glasser replied: 'Bailey says he will get my job if I don't put you away' and 'All the money in the world * * * can't do you no good at this time.'
>
> "After this conversation Roth's services were dispensed with and other counsel represented the defendants in that case. They were found guilty and on appeal the judgment was affirmed. (*United States* v. *Hodorowicz, et al.*, 105 F. (2) 220."

Government witness Frank Hodorowicz testified at Tr. 302-303 as follows:

> "Roth was my lawyer who was representing me in my case for a while after I was indicted. That is Alfred Roth the defendant here. I dispensed with Roth's service at that time. I left him go. A couple

of weeks after I put the bond on. That was after I had talked with Glasser. I did have occasion to go back to see Glasser after I released Roth from the case. I had a talk with him. I just asked him about a few lawyers. I don't just remember what lawyers. I asked him about two. I talked about Hess.

Q. What did you say to Glasser, and what did he say to you? A. Well, I says, I have to get a good lawyer to defend me, that is how bad I am in there, in trouble.

Q. What did you go to Glasser for? A. I was just down there to ask him about lawyers.

Q. Why did you go to Glasser and ask him about it? A. I just went in there to see what lawyer would be best.

Q. Well, what did Glasser say to you? A. I just don't remember what he said, and how he said.

The Court: What is your best recollection? A. Well, he says—I mentioned three lawyers, and he said, 'Well, any one of them are all right.'

Mr. Ward: Q. To refreshen your recollection—have you exhausted your recollection now, of what you said there, and of what Glasser said to you? A. I just talked about the case.

Q. Do you recall Glasser saying anything to you that Mr. Hess could do you a lot of good in that case? A. Well, I mentioned Hess, and he said, 'Hess could do you a lot of good.'

Q. Glasser said that to you? A. Yes, sir.

Q. Now, have you told us all the conversation you had with Glasser that you remember? A. Yes, sir.

Q. You can't remember any other? A. No, sir.

Q. Well, do you recall having a conversation with Glasser in which you said, it looked like you were in a lot of trouble over five cans of alcohol, and Glasser said you know, Frank, I like money, but this time, I can't do anything, do you recall that conversation? A. Well, he said for all the money in the world you can't do nothing on this case.

Q. Well, did he say what I just asked you? A. Maybe not just like that.

Q. Well, how? A. He said for all the money in the world he can't do you no good this time!"

He also testified at Tr. 302, as follows:

"After I was indicted in June of 1938 I saw Mr. Glasser in his office. I had a conversation with him. I talked to him. I went in there and asked him, I says, 'I think I am getting a raw deal around here,' and he says, 'Well I can't help it.' He says, 'You have to go to jail for five years,' I says 'For What?' Well, he says, 'Bailey says he will get my job if I don't put you away.' I don't know what else was said at that time, I was in there two or three times."

Here again it seems that this Honorable Court assumed and inferred that Roth had knowledge of the conversations between Glasser and Frank Hodorowicz. There is nothing in the record tending to show that Roth had knowledge of any conversation between Glasser and Frank Hodorowicz. The record fails to show as much as mention of Roth's name in any conversation Glasser had with Frank Hodorowicz. This Honorable Court quotes parts of conversations testified to by Frank Hodorowicz as having taken place between Glasser and him. The record is not clear as to whether Roth was discharged before or after the parts of the conversation quoted by this Honorable Court. It seems to support the conclusion that the conversation took place after Roth's discharge as Frank Hodorowicz's lawyer, as it appears that the conversation concerning the excerpt in the opinion took place at the time Frank Hodorowicz was trying to get Glasser to recommend a lawyer.

Roth testified that he conferred with Glasser shortly after he was engaged by Frank Hodorowicz and reported Glasser's attitude of a substantial penitentiary sentence in connection with a proposed plea of guilty (Tr. 858-859).

It was after this that Roth was discharged. If there was as much as a friendship, not to speak of a conspiracy, between Glasser and Roth, it would perhaps have resulted in at least Glasser suggesting that he saw no reason why he could not continue with Roth, who was representing him.

There is nothing in Roth's conduct in this case that is inconsistent with the conduct of any lawyer performing his duties as a lawyer.

Summarizing the above, the Court should have concluded:

(1) Roth stated to Judge Barnes in the Chrysler Sedan case facts which were sworn to in the answer and claim filed by his client.

(2) that he prepared conscientiously for trial with Swanson, Anthony Hodorowicz and Clem Dowiat in their case, viz., took statements from the clients wherein they denied their guilt, drew a diagram to be used on the trial of said cause and was ready to proceed for trial on the day set by the Court.

(3) that Roth was retained by Frank Hodorowicz in the Frank Hodorowicz, Mike Hodorowicz, Peter Hodorowicz and Clem Dowiat case and thereafter was substituted as counsel by Edward J. Hess.

In view of all the above, this appellant most vigorously contends that there is no evidence to support the charges against him.

This Court in summing up the noteworthy and expressive circumstances as to the defendant, Roth, says at page 13 of the opinion:

> "(2) The relations between Kretske and Roth and Roth's employment in liquor violations upon Kretske's recommendation."

Kretske did refer to Roth some trial work in connection with the defense of liquor violations. No inference of guilt

can possibly be drawn from Roth accepting employment in defending such cases as he was also retained by many other lawyers to try cases for them in the Federal Court.

This Court further says:

> "(5) The meeting of Kretske at Hodorowicz's store; the recommendation of Roth as attorney to defend; the payment of currency to Kretske; statement of Kretske 'not to worry, everything will be taken care of'; Glasser to receive part of the money; and the striking of the indictment."

There is no evidence in the record that Roth knew of any hardware store conversation (which in fairness to Kretske it must be said, he denied). As above pointed out, the case was referred to Roth to try and he conscientiously prepared for trial as any other lawyer would have done.

This Court further says:

> "(7) The indictment of Dowiat, Frank and Peter Hodorowicz; the retaining of Roth to defend; and his discharge after Hodorowicz was told by Glasser that 'all the money in the world would do him no good this time.'"

As pointed out in connection with the discussion of *Frank Hodorowicz, et al.*, case, it appears that the evidence is not clear to support the circumstances as set out by this Honorable Court. Roth was retained shortly after their indictment to defend and shortly thereafter discharged and another lawyer substituted. There is no evidence in the record that Roth knew of the visits by Frank Hodorowicz to Glasser's office and of any conversations had with him. It cannot be said that his employment and discharge as a lawyer creates an inference of guilt.

This court further says:

> "(11) The conduct and statements of Roth in the *Wroblewski* case."

The only other matter touched upon by this Honorable Court in its opinion has to do with alleged conversations between Alexander Campbell and the defendant Roth in connection with the *Wroblewski* case in Indiana. The Court is respectfully urged to re-examine pages 62 and 63 of appellant's original brief and pages 13 and 16 of appellant's reply brief.

The law is clear that the *corpus delecti* of the crime cannot be proved by any admissions or statements of the accused in the absence of other competent proof. In *Naftzger* v. *United States*, 200 Fed. 494 (C. C. A. 48) the court at page 498 said:

> "But it is contended that the evidence and testimony with reference to defendant's knowledge, such as his statement and acts subsequent to the purchase, tend to show that the stamps were stolen. It is not contended that defendant at any time made a confession of guilt. But, if he had made a confession out of court, such confession would not supply the requisite proof that the stamps had been stolen. A conviction upon extrajudicial confession, or acts or declarations of a prisoner, will not be sustained, without corroborative proof that the property was in fact stolen."

The court at page 499 further said:

> "So that there is required evidence that the stamps had been stolen from the government, and such evidence must be other than things said and done by the defendant."

To the same effect, *Tofanelli, et al.* v. *United States*, 28 Fed. (2) 581 (C. C. A. 9), *Martin* v. *United States*, 264 Fed. 950 (C. C. A. 8), Corpus Juris, Vol. 16, Sec. 1579, Wharton Cr. Ed., Sec. 325 and Sec. 623.

This appellant feels that upon reconsideration of the facts this court will grant the petition for rehearing and reverse the judgment of conviction as was done in *United*

States v. *Hain, et al.*, 114 Fed. (2) 566 (C. C. A. 2), and in *Kuhn, et al.* v. *United States*, 26 Fed. (2) 463 (C. C. A. 9), in which cases on a petition for rehearing after affirmance of the judgments the court granted the petitions for rehearing on a reconsideration of the facts and reversed the judgments.

Appellant seriously and earnestly feels that a great injustice has been done him as the affirmance of the judgment in his case carries with it graver and much more serious consequences than the execution of the judgment and he exhorts this Honorable Court to reconsider the testimony against him, which he earnestly believes establishes his innocence and is not sufficient to convict.

WHEREFORE, this appellant respectfully submits to this Honorable Court that his petition for rehearing be granted and sincerely urges that the judgment against him be reversed.

Respectfully Submitted,

ALFRED E. ROTH,
Pro Se.

And afterwards, to-wit: On the thirty-first day of December, 1940, in causes Nos. 7315, 7316 and 7317, there was filed in the office of the Clerk of this Court, an answer to petitions for rehearing, which said answer is in the words and figures following, to-wit:

IN THE

United States Circuit Court of Appeals

FOR THE SEVENTH CIRCUIT.

No. 7315

THE UNITED STATES OF AMERICA,
Plaintiff-Appellee,

vs.

DANIEL D. GLASSER,
Defendant-Appellant.

No. 7316

THE UNITED STATES OF AMERICA,
Plaintiff-Appellee,

vs.

NORTON I. KRETSKE,
Defendant-Appellant.

No. 7317

THE UNITED STATES OF AMERICA,
Plaintiff-Appellee,

vs.

ALFRED E. ROTH,
Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION.

HONORABLE PATRICK T. STONE, JUDGE PRESIDING.

APPELLEE'S ANSWER TO APPELLANTS' PETITIONS FOR REHEARING.

J. ALBERT WOLL,
United States Attorney,
MARTIN WARD,
FRANCIS J. McGREAL,
ROBERT C. EARDLEY,
Assistant United States Attorneys,
Counsel for Appellee.

IN THE

United States Circuit Court of Appeals

FOR THE SEVENTH CIRCUIT.

No. 7315

THE UNITED STATES OF AMERICA,
Plaintiff-Appellee,

vs.

DANIEL D. GLASSER,
Defendant-Appellant.

No. 7316

THE UNITED STATES OF AMERICA,
Plaintiff-Appellee,

vs.

NORTON I. KRETSKE,
Defendant-Appellant.

No. 7317

THE UNITED STATES OF AMERICA,
Plaintiff-Appellee,

vs.

ALFRED E. ROTH,
Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION.

HONORABLE PATRICK T. STONE, JUDGE PRESIDING.

APPELLEE'S ANSWER TO APPELLANTS' PETITIONS FOR REHEARING.

To the Honorable Judges of the United States Circuit Court of Appeals for the Seventh Circuit:

Now comes the United States of America, appellee herein, by J. Albert Woll, United States Attorney for the Northern District of Illinois, and for answer to the petitions for rehearing filed in the above entitled cause says:

We have carefully read the appellants' petitions for rehearing and are forced to the conclusion that it is an attempt on the part of the appellants to have the Court again consider the entire Record.

It has long been the established custom and rule, not only in this Circuit but in the many Circuits throughout the United States, that petitions for rehearing should only call to the Court's attention a particular fact overlooked by the Court or a particular case or rule of law, the construction of which was misapprehended by the Court. These petitions go well beyond that restriction and are but an attempt to have the Court once again pass on something which its Opinion has thoroughly settled.

The appellants cite, in their petitions for rehearing, certain cases and contend that the rule of law announced therein was misapplied by the Court to the facts in this case.

We must say that our examination of these cases convinces us that the Court did not misapprehend the rule of law announced therein, and any lengthy discussion of these particular cases would carry us into the same field of error in which we find the appellants.

It is, therefore, respectfully urged that the petition for a rehearing be denied.

Respectfully submitted,

J. ALBERT WOLL,
United States Attorney.

MARTIN WARD,
FRANCIS J. MCGREAL,
ROBERT C. EARDLEY,
Assistant United States Attorneys,
Counsel for Appellee.

12-31-40—50

And afterwards, to-wit: On the fourth day of January, 1941, in cause No. 7315, there was filed in the office of the Clerk of this Court, a brief Amicus Curiae, which said brief is in the words and figures following, to-wit:

1219

IN THE

United States Circuit Court of Appeals

FOR THE SEVENTH CIRCUIT

No. 7315

THE UNITED STATES OF AMERICA,
Plaintiff-Appellee,

vs.

DANIEL D. GLASSER,
Defendant-Appellant.

BRIEF AMICUS CURIAE

RALPH M. SNYDER,
Amicus Curiae.

BARNARD & MILLER, 33 S. Market St., Chicago. FRAnklin 0562

IN THE

United States Circuit Court of Appeals

FOR THE SEVENTH CIRCUIT

No. 7315

THE UNITED STATES OF AMERICA,
Plaintiff-Appellee,

vs.

DANIEL D. GLASSER,
Defendant-Appellant.

BRIEF AMICUS CURIAE

MAY IT PLEASE THE COURT:

Some 25 years absence from experience in the State's Attorney's office may be not a strong recommendation for this suggestion of adding to the labors of your Honors.

I testified as a character witness for Glasser, attended the hearing of arguments in this Court, and since the handing down of the opinion herewith have re-read the record.

In determining what my duty is with respect to Mr. Glasser, with whose work I was more than usually

informed during the administrations of Governor-Elect Green and Judge Igoe, I have not given Glasser the benefit of any assumptions. He occupied such a position of trust in the Judicial Department, prosecuting a large percentage of the total cases tried during his four years incumbency, that his every act must stand the pitiless light of searching inquiries.

The Government said:

> "There is not anything in this indictment that says anybody paid Glasser a bribe." (Rec. 154.)

The theory of the Government's case was that this was a conspiracy to solicit promises, and it was pointed out that each paragraph of the indictment started out with the word "solicited". (Rec. 156.) There is not a particle of evidence that Glasser ever, directly or indirectly, solicited a bribe, promises, or anything of value for his personal behalf, or anything other than information and leads in connection with the cases he was prosecuting.

Thus this Court is confronted with a most general charge of conspiracy, specific allegations as to certain things which were not proven, and on the other hand, the testimony of three United States District Judges who testified not only as to their observation of the efficiency with which Glasser conducted his office (Rec. 717, 737, 890), but specifically as to the cases in which he had appeared before them. One of these Judges was Glasser's supervisor during most of the time Glasser served as Assistant District Attorney, and during all of the time that any of the cases involved in this record were being handled.

The testimony of Judge Igoe is categorical. He said:

> "The various actions of my Assistant, Mr. Glas-

> ser, were taken up by him and discussed with me, and I knew all of the orders that were rendered either before or shortly after they were rendered, and they had my approval." (Rec. 895.)

Some strong motive has actuated the prosecution of Glasser, bitterly and unfairly carried on by the Government, as instanced by its denial to him of an opportunity to examine the records which had been specifically granted him by the trial court (Rec. 979, 983), on the flimsy excuse that he did not have his lawyer with him. These motives may be gleaned from the testimony of Judge Igoe, who testified:

> "Soon after my appointment as United States Attorney, I became convinced that the Alcohol Tax Unit was not looking after the big operations—they were looking for the little people, and they constantly flooded our office with small factory people who were cookers, or people who rented some old store or such. They never would bring in the individual who really operated the still." (Rec. 895.)

While an objection was sustained at this point, additional testimony along the same lines was given, and this Court can take judicial notice of the wide publicity which has existed not only in Chicago, but in Washington as to the running feud between the Treasury and Legal Departments with respect to investigations and reports by the Treasury Department of Violations of the Alcohol Tax Laws. This feud resulted in trips between Chicago and Washington, and was brought to a bitter head by Glasser's duty to report to the Court certain alleged violations by Mr. Yellowley, resulting in Mr. Yellowley's statement:

> "Mr. Glasser, I will get you if it is the last thing I ever do." (Rec. 948.)

While this statement may be dismissed as made in the heat of anger, the acts of certain overly aggressive agents, in this mosaic of intrigue and charges and counter-charges, cannot be ignored. One example should suffice to put the Court on inquiry.

On December 9, 1938, one Paul Svec, who had theretofore twice been convicted as a result of Glasser's prosecution of him, and was then under sentence of two years, and out on bond pending appeal, was arrested by the investigators for the Alcohol Tax Unit and taken to the office of said Unit. He was there told: "They would let me (Svek) go if I did this telephoning." (Rec. 565.) That he called Glasser on the telephone, at an unlisted telephone number which the agents gave him, with the agents beside him at the office of the Alcohol Tax Unit. Svek asked Glasser to help him get out of his present difficulties and offered money as an inducement. Mr. Svek did not admit the offering of money. This appears from the testimony of Inspector McFarland of the Federal Bureau of Investigation. (Rec. 584.) Here was unmitigated and inexcusable attempt at entrapment.

This Court must have been impressed with the frankness with which Glasser moved when any reflections were made upon the Department of Justice. Both Judge Igoe and Judge Barnes testified to his conferences with them on any matters which involved matters within their respective jurisdictions.

In the Svek matter Glasser succeeded in getting Special Agent McFarland to listen to the ensuing conversation between Svek and Glasser when Svek was summoned to Glasser's office. This complete conversation appears on page 584 of the record. It is enough to say that Svek admitted that he had been told to

call Mr. Glasser by Agents Casserly and Harks (Rec. 585); that Casserly gave him the telephone number and he admitted that he had never paid any money or made any promises. (Rec. 584.)

Not only is there a complete absence of anything in the record to show that Glasser ever directly or indirectly benefited from any bribes that may have been passed, but there is no showing that as a result of any acts on the part of any one else, that Glasser was derelict in respect to any of his duties. The specific instances that were called up were adequately disposed of by the testimony of the agents and the Federal Judges who testified, including Judge Igoe, who was Glasser's superior.

In a record where certain of the defendants did not appeal and where the conviction stands with respect to them, if there was any evidence, concrete, specific or otherwise, of Glasser's wrongdoings, it would have been brought forward. If there were any truth in the charges it should have been available, because practically all of the government's witnesses, aside from agents, were men whom Glasser had previously prosecuted and convicted. Most of these witnesses were brought back from the penitentiary and could appreciate any inducements the Government might make. With this ideal setup, the government produced no creditable testimony against Glasser, but fell back on its general charges of conspiracy against a group—some of whom have not appealed.

The Court in its opinion has made a summary of most of the outstanding incidents. In even a 23-page opinion the Court could, of course, not enumerate all of the facts. To evaluate such facts as it did consider the complete story as set forth in Glasser's Petition for Rehearing should be considered.

The Government's answer to the Petition for Rehearing does not attempt to assist the Court in the comprehension of the real facts, but dismisses the entire matter in so cavalierly a manner as to justify Glasser's friends to impose the burden of reading an additional document in the hope that justice may be done a prosecutor, whom Judge Barnes described as "an excellent prosecutor, possibly too good for the criminals." (Rec. 720.)

I have not argued or relied upon any of the so-called technical defenses. My duty to this Court and to one who was one of the ablest attorneys in the department of justice, is performed in suggesting that there is no evidence to sustain the conviction, but that the overwhelming weight of testimony shows that Glasser in a particularly important and difficult situation, surrounded as he was by charges and counter-charges, largely emanating from Washington, and bitterly reflected in the public press, performed his duties conscientiously and as capably as he could have, and consulted freely with his superiors and those entitled to be fully advised.

It is impossible for me to conceive that three Judges in the same building, all of wide experience, astute judges of character as they are, should voluntarily take the witness stand in behalf of the one defendant Glasser, without being sure of their facts and their judgment of the character of the man against whom these charges were brought. It is not that such men were willing to testify, or that any attempt is made to escape behind the folds of the judicial robe, but the absence of any creditable proof against Glasser which calls for this document.

If Glasser stands convicted of these charges, then

no man in high position is any safer in the United States than in any of the other countries against whom Glasser drew his sword in the last war.

Respectfully submitted,

RALPH M. SNYDER,
Amicus Curiae.

And afterwards, to-wit: On the seventh day of January, 1941, in cause No. 7315, there was filed in the office of the Clerk of this Court a memorandum in support of petition for rehearing of appellant Glasser, which said memorandum is in the words and figures following, to-vit:

IN THE

United States Circuit Court of Appeals

FOR THE SEVENTH CIRCUIT.

No. 7315

THE UNITED STATES OF AMERICA,
Plaintiff-Appellee,

vs.

DANIEL D. GLASSER,
Defendant-Appellant.

MEMORANDUM IN SUPPORT OF PETITION FOR REHEARING OF APPELLANT GLASSER.

JOHN ELLIOTT BYRNE,
Attorney for Appellant Glasser.

DANIEL D. GLASSER,
Petitioner, Pro se.

THE DUNLOP-WARREN PRINTING COMPANY, 210 WEST JACKSON, CHICAGO

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IN THE

United States Circuit Court of Appeals

FOR THE SEVENTH CIRCUIT.

No. 7315

THE UNITED STATES OF AMERICA,
Plaintiff-Appellee,

vs.

DANIEL D. GLASSER,
Defendant-Appellant.

MEMORANDUM IN SUPPORT OF PETITION FOR REHEARING OF APPELLANT GLASSER.

A recent decision of the Supreme Court has, we feel, so important a bearing upon the Glasser petition for rehearing as to require its presentation to the Court of Appeals in this Memorandum. That case is *United States* v. *Falcone,* decided December 9, 1940, reported in 61 S. C. Rep. 204.

In that case the Supreme Court held that one is not guilty of conspiracy if he has no knowledge of the conspiracy, even though his act may have furthered the object of the conspiracy. This rule of law, we respectfully submit, exactly covers the situation of Glasser here. Indeed, Glasser's situation is much more favorable than that of Falcone, *et al.;* they were guilty of an immoral (if not an illegal) act, viz.: selling sugar to an illicit distillery, with knowledge that the latter was using the

sugar for illegal purposes. In the case at bar Glasser, we respectfully submit, committed no immoral act, much less an illegal or criminal one. If we are correct in our understanding of the Court's opinion in the present case, the import of the opinion is that the verdict of the jury may be justified on the theory not that there was any wrongful act by Glasser in furtherance of the conspiracy, or otherwise, but that the inferences from the alleged wrongful acts of some of the other defendants cast a presumption of guilt upon Glasser, because the result of some of the prosecutions conducted by Glasser apparently coincided with the purposes of some of the other defendants.

Notwithstanding the fact that the Court in its opinion evidently gave careful study to the evidence at the trial, we trust that our Petition for Rehearing has shown that Glasser's action in every case relied upon by the prosecution was proper, and in accordance with a desire and purpose to perform his duties conscientiously.

In the *Falcone* case, *supra,* the Supreme Court held directly that acts in furtherance of the conspiracy were not proof of knowledge of the conspiracy, much less of guilty participation therein. To an even greater degree is such proof lacking in the present case, where the very most that can be said of the evidence is that it might be contended that the result of certain prosecutions (a few out of thousands) conducted by Glasser eventuating in dismissals, no-bills, etc., were coincidentally in accordance with the purposes of a conspiracy, such as may have existed between Kaplan and Horton, with which, however, Glasser had nothing to do and of which he had no knowledge.

The language of the Supreme Court in the Falcone case is most emphatic and definite upon this proposition. The Court says, at page 205:

> "We did not bring the case here to review the evidence, but we are satisfied that the evidence on which

the Government relies does not do more than show knowledge by respondents that the materials would be used for illicit distilling if it does as much in the case of some. In the case of Alberico, as in the case of Nicholas Nole, the jury could have found that he knew that one of their customers who is an unconvicted defendant was using the purchased material in illicit distilling. But it could not be inferred from that or from the casual and unexplained meetings of some of respondents with others who were convicted as conspirators that respondents knew of the conspiracy. The evidence respecting the volume of sales to any known to be distillers is too vague and inconclusive to support a jury finding that respondents knew of a conspiracy from the size of the purchases even though we were to assume what we do not decide that the knowledge would make them conspirators or aiders or abettors of the conspiracy. Respondents are not charged with aiding and abetting illicit distilling, and they cannot be brought within the sweep of the Government's conspiracy dragnet if they had no knowledge that there was a conspiracy."

In the Falcone case there was admittedly a conspiracy; in the present case there was allegedly a conspiracy in which at least Kaplan and Horton were involved. In the Falcone case the question was whether or not Falcone, *et al.*, had knowledge of the conspiracy and participated therein. So here the question is whether or not Glasser had knowledge of the conspiracy and participated therein. In the Falcone case there was proof of wrongful acts and realization of pecuniary profit therefrom by Falcone, *et al.* In the present case there is no proof of wrongful acts of Glasser or any pecuniary profit to him from any of his acts. How then can the prosecution consistently contend that Glasser had knowledge of the conspiracy, much less was a participant therein?

We respectfully suggest that the alleged acts of Horton and Kaplan, and possibly others, has confused the prosecution here into assuming a connection of Glasser therewith. In the Falcone case the Supreme Court held that the

prosecution was in error in assuming the connection of Falcone, *et al.*, with the conspiracy there involved, notwithstanding that the evidence against Falcone, *et al.*, was far stronger than that in the present case against Glasser.

The Falcone decision also furnishes incidental support to our contention throughout that the testimony of Raubunas that he saw Kretske, Kaplan and Glasser together in an automobile, was insubstantial and to be accorded no weight. It will be noted that in the quotation above set forth the Supreme Court states that knowledge of the conspiracy could not be inferred from the fact that the sugar seller knew the sugar was to be used in illicit distilling, much less could such knowledge be inferred *"from the casual and unexplained meetings of some of the respondents with others who were convicted as conspirators."* (Italics ours.)

We respectfully call this court's attention to the extensive footnote in the Falcone case setting forth in considerable detail numerous meetings between Falcone, *et al.*, and the admitted conspirators, as well as a large number of other acts, transactions and events, all of which we respectfully submit far surpass in their tendency to show guilty knowledge any of the trivial and coincidental circumstances suggested by the prosecution in the present case as creating a suspicion of guilt on Glasser's part.

We respectfully suggest that inasmuch as the Government in its answer to Glasser's Petition for Rehearing has not made the slightest intimation that any of our statements as to the evidence in the record are incorrect, that such answer may properly be considered by this Court as an admission of the accuracy of our statements in the Petition for Rehearing.

Conclusion.

In conclusion, therefore, we respectfully submit that the Petition of appellant Glasser for a Rehearing should be granted.

Respectfully submitted,

John Elliott Byrne,
Attorney for Appellant Glasser.

Daniel D. Glasser,
Petitioner, Pro se.

And afterwards, to-wit: On the twenty-third day of January, 1941, the following further proceedings were had and entered of record, to-wit:

Thursday, January, 23, 1941.

Court met pursuant to adjournment.

Before:

Hon. William M. Sparks, Circuit Judge.
Hon. Walter E. Treanor, Circuit Judge.
Hon. Otto Kerner, Circuit Judge.

7315	The United States of America, *Plaintiff-Appellee,* *vs.* Daniel D. Glasser, *Defendant-Appellant.*	Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

It is ordered by the Court that the petition for a rehearing of this cause be, and the same is hereby, denied.

7316	The United States of America, *Plaintiff-Appellee,* *vs.* Norton I. Kretske, *Defendant-Appellant.*	Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

It is ordered by the Court that the petition for a rehearing of this cause be, and the same is hereby, denied.

7317	The United States of America, *Plaintiff-Appellee,* *vs.* Alfred E. Roth, *Defendant-Appellant.*	Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

It is ordered by the Court that the petition for a rehearing of this cause be, and the same is hereby, denied.

And afterwards, to-wit: On the twenty-seventh day of January, 1941, in causes Nos. 7315, 7316 and 7317, there was filed in the office of the Clerk of this Court, a praecipe for record on certiorari, which said praecipe is in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS,

For the Seventh Circuit.

United States of America, *Plaintiff-Appellee,* *vs.* Daniel D. Glasser, Norton I. Kretske, and Alfred E. Roth, *Defendants-Appellant.*	Nos. 7315, 7316, 7317.

PRAECIPE FOR RECORD ON CERTIORARI.

To: Clerk of the United States Circuit Court of Appeals for the Seventh Circuit:

You will please cause to be prepared and certified sufficient copies of the record in the above cause for use on petition for certiorari in the Supreme Court of the United States, including therein the following:

1. The record as printed for use in the Circuit Court of Appeals for the Seventh Circuit.
2. Order consolidating appeals and that cause be heard on one record, filed July 10, 1940.
3. Certificate to exhibits filed August 2, 1940.
4. Supplemental certificate to exhibits filed August 6, 1940.
5. Petition for order Re: missing exhibits, filed August 7, 1940.
6. Answer to petition for order on United States Attorney filed August 12, 1940.
7. Reply to answer, etc. filed August 12, 1940.
8. Additional answers filed August 13, 1940.
9. Order Re: transmission of exhibits entered August 14, 1940.
10. Additional Assignment of Error, filed August 27, 1940.

11. Motion to suppress brief of appellant Glasser, filed September 4, 1940.
12. Points in support thereof, etc. filed September 4, 1940.
13. Affidavit Re: brief, etc. filed September 4, 1940.
14. Memorandum in support, filed September 11, 1940.
15. Order Re: Motion to suppress brief, entered September 13, 1940.
16. Opinion by Hon. Otto Kerner, C. J. filed December 13, 1940.
17. Judgments affirming entered December 13, 1940.
18. Petitions for rehearing filed December 24, 1940.
19. Answer to Petitions for rehearing filed December 3, 1940.
20. Brief Amicus Curiae filed January 4, 1941.
21. Memorandum in support of petition for rehearing filed January 7, 1941.
22. Order denying petitions for rehearing, entered January 23, 1941.

Daniel D. Glasser,
Norton I. Kretske,
Alfred E. Roth,
Defendants-Appellants.

Endorsed: Filed Jan. 27, 1941. Kenneth J. Carrick, Clerk.

UNITED STATES CIRCUIT COURT OF APPEALS,

For the Seventh Circuit.

I, Kenneth J. Carrick, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages contain a true copy of the proceedings had and papers filed, made in accordance with the praecipe filed on the twenty-seventh day of January, 1941, in the following entitled causes:

The United States of America,
Plaintiff-Appellee,

7315 *vs.*

Daniel D. Glasser,
Defendant-Appellant.

The United States of America,
Plaintiff-Appellee,

7316 *vs.*

Norton I. Kretske,
Defendant-Appellant.

The United States of America,
Plaintiff-Appellee,

7317 *vs.*

Alfred E. Roth,
Defendant-Appellant,

as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In Testimony Whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this 7th day of February, A. D. 1941.

Kenneth J. Carrick,
(Seal) *Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.*

No. 31825

THE UNITED STATES.

vs.

DANIEL D. GLASSER, NORTON I. KRETSKE, ALFRED E. ROTH, ANTHONY HORTON alias TONY HORTON, LOUIS KAPLAN

We, the Jury, find the Defendants, Daniel D. Glasser, Norton I. Kretske, Alfred E. Roth, Anthony Horton alias Tony Horton, Louis Kaplan guilty as charged in the indictment.

Walter Wilson, Leslie V. Alexander, Arthur A. Campbell, Virginia R. Haven, Cornelius Jacobus, William J. Jungels, Mildred W. Kelly, Laura H. Lawson, Bernice G. Lund, Theresa Rew, Margaret W. Rieser, Edward F. Young.

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1941

No. 30

ORDER ALLOWING CERTIORARI—Filed April 7, 1941

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1941

ORDER ALLOWING CERTIORARI—Filed April 7, 1941

No. 31

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1941

ORDER ALLOWING CERTIORARI—Filed April 7, 1941

No. 32

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.